FORM NLRB-502 (RD)
(4-15)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

RD PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 19-RD-216636	Date Filed 3/15/2018

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE)** - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer	2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code)
APPLE BUS COMPANY	34234 INDUSTRIAL STREET, SOLDOTNA, AK 99669

3a. Employer Representative – Name and Title	3b. Address (If same as 2b – state same)
JULIE CISCO - GENERAL MANAGER, ALASKA	SAME

3c. Tel. No.	3d. Cell No.	3e. Fax No.	3f. E-Mail Address
(907) 262-4900		(907) 262-4940	julie.cisco.@applebuscompay.com

4a. Type of Establishment (Factory, mine, wholesaler, etc.)	4b. Principal product or service	5e. City and State where unit is located:
TRANSPORTATION	SCHOOL BUS DRIVERS AND ATTENDANTS	SOLDOTNA, ALASKA

5b. Description of Unit Involved

Included: All full time & regular part time school bus drivers, special service drivers, monitors & attendants.

Excluded: All office clerical employees, mechanics, school crossing guards, dispatchers, guards & supervisors.

6a. No. of Employees in Unit: 114

6b. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes [✓] No [ ]

Check One:
- [ ] 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) *(If no reply received, so state).*
- [ ] 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent	8b. Address
Michael Petrovich	PO Box 3150, Kenai, AK 99611

8c. Tel No.	8d Cell No.	8e. Fax No.	8f. E-Mail Address
(907) 283-4498	(907) 244-1596	(907) 283-8030	MPETROVICH@ALASKATEAMSTERS.COM

8g. Affiliation, if any	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
GENERAL TEAMSTERS LOCAL 959	FEBRUARY 29, 2008	NO COLLECTIVE BARGAINING AGREEMENT

9. Is there now a strike or picketing at the Employer's establishment(s) involved? NO If so, approximately how many employees are participating? _____

(Name of labor organization) _____ has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. *(If none, so state)*

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address

11. **Election Details:** If the NLRB conducts an election in this matter, state your position with respect to any such election.

11a. Election Type: [✓] Manual [ ] Mail [ ] Mixed Manual/Mail

11b. Election Date(s):	11c. Election Time(s):	11d. Election Location(s):
April 2, 2018	8 AM - 5 - PM	Soldotna, Homer, and Seward

12a. Full Name of Petitioner	12b. Address (street and number, city, state, and ZIP code)
ELIZABETH JEAN CHASE	PO BOX 39, KASILOF, AK 99610

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent *(if none, so state)*
GENERAL TEAMSTERS LOCAL 959, STATE OF ALASKA

12d. Tel No.	12e. Cell No.	12f. Fax No.	12g. E-Mail Address
(907) 262-3233			beachmfishery@gmail.com

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title	13b. Address (street and number, city, state, and ZIP code)
Glenn M Taubman - National Right To Work Representative	8001 Braddock Road, Suite 600, Springfield, VA 22160

13c. Tel No.	13d. Cell No.	13e. Fax No.	13f. E-Mail Address
(703) 321-8510		(703) 321-9319	gmt@nrtw.org

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)	Signature	Title	Date
Elizabeth J. Chase	Elizabeth J. Chase	School Bus Driver	3/15/2018

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Agency Website: www.nlrb.gov
Telephone: (206)220-6300
Fax: (206)220-6305

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Mobile App

March 15, 2018

URGENT

julie.cisco@applebuscompany.com
(907)262-4940

JULIE CISCO, GENERAL MANAGER-ALASKA
APPLE BUS COMPANY
34234 INDUSTRIAL STREET
SOLDOTNA, AK 99669

Re: Apple Bus Company
Case 19-RD-216636

DEAR MS. CISCO:

Enclosed is a copy of a petition that Elizabeth J. Chase filed with the National Labor Relations Board (NLRB) seeking to decertify General Teamsters Local 959 as the collective-bargaining representative of certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures.

Investigator: This petition will be investigated by Field Attorney RACHEL CHEREM whose telephone number is (206) 220-6298. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner DIANNE TODD whose telephone number is (206) 220-6319. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Posting and Distribution of Notice: You must post the enclosed Notice of Petition for Election by March 19, 2018 in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate with your employees electronically, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Posting and distribution of the Notice of Petition for Election will inform the employees whose representation is at issue and the employer of their rights and obligations under

the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Pacific Time** on **March 22, 2018**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form may be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon March 22, 2018.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

List(s) of Employees: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings

that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM** on **Friday, March 23, 2018** at the **Conference Room**, **Soldotna Public Library Central Library, 235 N. Binkley St., Soldotna, AK 99669,** if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Other Information Needed Now*:* Please submit to this office, as soon as possible, the following information needed to handle this matter:

(a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);

(b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;

(c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.

(d) If you desire a formal check of the showing of interest, you must provide an alphabetized payroll list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. Such a payroll list should be submitted as early as possible prior to the hearing.

Ordinarily a formal check of the showing of interest is not performed using the employee list submitted as part of the Statement of Position.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. E-Filing your documents places those documents in our official electronic case files. On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, www.nlrb.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Ronald K. Hooks

RONALD K. HOOKS
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

cc: TERRENCE KILROY, ATTORNEY
POLSINELLI PC
900 W 48TH PL STE 900
KANSAS CITY, MO 64112-1899

lu

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

APPLE BUS COMPANY **Employer** **and** **ELIZABETH J. CHASE** **Petitioner** **and** **GENERAL TEAMSTERS LOCAL 959** **Union**	**Case 19-RD-216636**

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at **10:00 AM** on **Friday, March 23, 2018** and on consecutive days thereafter until concluded, at the **Conference Room, Soldotna Public Library Central Library, 235 N. Binkley St., Soldotna, AK 99669**, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Apple Bus Company and General Teamsters Local 959 must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Pacific time on March 22, 2018**.** The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Pacific on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: March 15, 2018

/s/ *Ronald K. Hooks*

Ronald K. Hooks, Regional Director
National Labor Relations Board
Region 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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Agency Website: www.nlrb.gov
Telephone: (206)220-6300
Fax: (206)220-6305

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March 15, 2018

URGENT

beachmfishery@gmail.com

ELIZABETH J. CHASE
PO BOX 39
KASILOF, AK 99610-9303

Re: Apple Bus Company
Case 19-RD-216636

DEAR MRS. CHASE:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Attorney RACHEL CHEREM whose telephone number is (206) 220-6298. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner DIANNE TODD whose telephone number is (206) 220-6319. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Showing of Interest: If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM** on **Friday, March 23, 2018** at the **Conference Room**, **Soldotna Public Library Central Library, 235 N. Binkley St., Soldotna, AK 99669,** if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement

with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by March 19, 2018 in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates with its employees electronically, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the Employer and the Union are required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Pacific Time** on **March 22, 2018**. The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

Voter List: If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB’s website or

from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

(a) The correct name of the Union as stated in its constitution or bylaws.

(b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.

(c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.

(d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, www.nlrb.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Ronald K. Hooks

RONALD K. HOOKS
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

cc: GLENN M. TAUBMAN, ATTORNEY
NATIONAL RIGHT TO WORK LEGAL
FOUNDATION
8001 BRADDOCK ROAD, SUITE 600
SPRINGFIELD, VA 22160

lu

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

Apple Bus Company **Employer** **and** **Elizabeth J. Chase** **Petitioner** **and** **General Teamsters Local 959** **Union**	**Case 19-RD-216636**

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Friday, March 23, 2018** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at Conference Room, Soldotna Public Library Central Library, 235 N. Binkley St., Soldotna, AK 99669, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Apple Bus Company and General Teamsters Local 959 must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Pacific time on March 22, 2018**.** The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Pacific on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: March 15, 2018

RONALD K. HOOKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Agency Website: www.nlrb.gov
Telephone: (206)220-6300
Fax: (206)220-6305

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March 15, 2018

URGENT

jeberhart@akteamsters.com
(907)751-8595

JOHN EBERHART, GENERAL COUNSEL
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 959
520 EAST 34TH AVENUE, SUITE 102
ANCHORAGE, AK 99503

Re: Apple Bus Company
Case 19-RD-216636

DEAR MR. EBERHART:

Enclosed is a copy of a decertification petition filed by Elizabeth J. Chase regarding certain employees of Apple Bus Company. This letter tells you how to contact the Board agent who will be handling this matter, the requirement to complete, file and serve a Statement of Position Form, notifies you of a hearing, explains your right to be represented, requests that you provide certain information, and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Attorney RACHEL CHEREM whose telephone number is (206) 220-6298. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner DIANNE TODD whose telephone number is (206) 220-6319. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the Union is required to complete a Statement of Position form (Form NLRB-505), have it signed by an authorized representative, and file a completed copy with this office and serve it on all parties named in the petition by **noon Pacific Time** on **March 22, 2018**. **This form may be e-Filed but unlike other e-Filed documents will *not* be timely if filed on the due date but after noon Pacific Time.** The Union, as a non-employer party, is NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

The Employer is also required to file a Statement of Position which is due at the same time as the Union's Statement of Position. The Employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit.] The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

> A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM** on **Friday, March 23, 2018** at the **Conference Room**, **Soldotna Public Library Central Library, 235 N. Binkley St., Soldotna, AK 99669,** if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party, the regional director may postpone the hearing for up to 2 business days upon a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by March 19, 2018 in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates with its employees electronically, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Other Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

(a) The correct name of the Union as stated in its constitution or bylaws.

(b) A copy of any existing or recently expired collective-bargaining agreements, and any addenda or extensions, or any recognition agreements covering any employees in the petitioned-for unit.

(c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.

(d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. When feasible, the list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the

10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Also enclosed is a Description of Procedures in Certification and Decertification Cases (Form NLRB-4812). We strongly urge everyone to submit documents and other materials by E-Filing (not e-mailing) through our website, www.nlrb.gov. On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB and our customer service standards is available on our website, www.nlrb.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Ronald K. Hooks

RONALD K. HOOKS
Regional Director

Enclosures
1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

Apple Bus Company **Employer** **and** **Elizabeth J. Chase** **Petitioner** **and** **General Teamsters Local 959** **Union**	**Case 19-RD-216636**

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Friday, March 23, 2018** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at Conference Room, Soldotna Public Library Central Library, 235 N. Binkley St., Soldotna, AK 99669, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Apple Bus Company and General Teamsters Local 959 must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than **noon** Pacific time on March 22, 2018**.** The Statement of Position may be E-Filed but, unlike other E-Filed documents, must be filed by noon Pacific on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position is not required to be filed.

Dated: March 15, 2018

RONALD K. HOOKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

FORM NLRB-5548
(4-15)

Request to Block

International Brotherhood of Teamsters, Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636 . It has filed an unfair labor practice
(Case Number)

charge in Case 19-CA-212813 and hereby requests that the petition be blocked by this charge.
(Case Number)

Signature

03/16/2018
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D) Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member & (b) (6), (b) (7)(C), (b) (7)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and (b) (6), (b) (7)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and (b) (6), (b) (7)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and (b) (6), (b) (7)(C), (b)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

(Continue on additional pages as necessary)

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FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters, Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636 (Case Number). It has filed an unfair labor practice

charge in Case 19-CA-212798 (Case Number) and hereby requests that the petition be blocked by this charge.

Signature

03/16/2018
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D) Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D) Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member & (b) (6), (b) (7)(C), (b) (7)(

Summary of Testimony:

(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D) Union bargaining team member and (b) (6), (b) (7)

Summary of Testimony:

(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and (b) (6), (b) (7)

Summary of Testimony:

(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and (b) (6), (b) (7)(C), (b)

Summary of Testimony:

(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name:

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

(Continue on additional pages as necessary)

FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters, Local 959 is a party to the representation proceeding in Case 19-RD-216636. It has filed an unfair labor practice charge in Case 19-CA-214770 and hereby requests that the petition be blocked by this charge.

(Name of Requesting Party) (Case Number) (Case Number)

Signature

03/16/2018
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D) Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member & (b) (6), (b) (7)(C), (b) (7)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D) Union bargaining team member and (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and (b) (6), (b) (7)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D) Union bargaining team member and (b) (6), (b) (7)(C), (b)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name:

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

(Continue on additional pages as necessary)

(Continue on additional pages as necessary)

FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters, Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636 . It has filed an unfair labor practice
(Case Number)

charge in Case 19-CA-212764 and hereby requests that the petition be blocked by this charge.
(Case Number)

Signature

03/16/2018
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D) Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member & (b) (6), (b) (7)(C), (b) (7)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and (b) (6), (b) (7)(

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and (b) (6), (b) (7)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and (b) (6), (b) (7)(C), (b)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name:

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

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Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

(Continue on additional pages as necessary)

(Continue on additional pages as necessary)

Attached to Request to Block (NLRB Case 19-RD-216636)
For (b) (6), (b) (7)(C) : Offer of Proof

1) Alaska Handbook and/or the Alaska Rider to that handbook
2) copy of the Company's vehicle/equipment insurance policy that covers employees who drive at Apple including any/all attachments, provisions and/or riders
3) a detailed list of health insurance preferred providers operating on the Kenai Peninsula and related material
4) a detailed list of all economic and non-economic benefits Apple provides to its employees including but not limited to holidays, etc.
5) copies of all Company policies/procedures including but not limited to: copies of all safety policies/procedures
6) copies of the Company's visitor sign-in policy/procedure
7) copies of the Company's vendor sign-in policy/procedure
8) copies of the Company's sign-in sheets for employee meetings from each Alaska location for the 2017/2018 school year since the Company alleges that employees were told of its policies at those meetings
9) copies of all attendance points issued to employees and all related discipline issued to employees for the 2017/2018 school year
10) copies of all signed employee acknowledgement forms showing employee issuance and receipt of Company documents and information including, but not limited to the handbook and any/all policies and procedures
11) copy of any/all documentation and related information identifying and pertaining to any/all employees the Company claims ran late due to speaking with the Union
12) copies of employee job offer letters and acceptance letters signed by employees
13) signed copies of the revenue contract including, but not limited to any/all attachments, addendums, amendments, rates, side-letters, etc. as it pertains to pupil transportation and charter work servicing the Kenai Peninsula Borough School District, including any/all documents provided to the school district and related correspondence that relate to Apple Bus Companies wage and benefit package for its employees
14) Company's "Drug and alcohol policy
15) Company's "Cell phone policy" including any/all employee acknowledgement forms: while the Company has provided a blank acknowledgement form

FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters, Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636 . It has filed an unfair labor practice
(Case Number)

charge in Case 19-CA-212776 and hereby requests that the petition be blocked by this charge.
(Case Number)

Signature

03/16/2018
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D) Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D) Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Teamsters Local 959 (b) (6), (b) (7)(C), (b) (7)(D)

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member & [redacted]

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and [redacted]

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and [redacted]

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: (b) (6), (b) (7)(C), (b) (7)(D), Union bargaining team member and [redacted]

Summary of Testimony:
(b) (6), (b) (7)(C), (b) (7)(D)

Witness Name: _____

Summary of Testimony:

Witness Name: _____

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Witness Name: _____

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Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

(Continue on additional pages as necessary)

FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

Apple Bus Co.

and

Elizabeth Chase

CASE 19-RD-216636

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ GENERAL COUNSEL
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF

Charging Party Elizabeth Chase

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ **REPRESENTATIVE IS AN ATTORNEY**

☐ **IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.**

(REPRESENTATIVE INFORMATION)

NAME: Amanda K. Freeman

MAILING ADDRESS: c/o National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Rd., Springfield, VA 22160

E-MAIL ADDRESS: akf@nrtw.org

OFFICE TELEPHONE NUMBER: 703-321-8510

CELL PHONE NUMBER: _____ *FAX:* 703-321-9319

SIGNATURE: Amanda Freeman
(Please sign in ink.)

DATE: 3/16/18

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

APPLE BUS COMPANY

Employer

and **Case 19-RD-216636**

ELIZABETH J. CHASE

Petitioner

and

GENERAL TEAMSTERS LOCAL 959

Union

ORDER POSTPONING HEARING INDEFINITELY

IT IS HEREBY ORDERED that the hearing in the above-captioned matter scheduled for March 23, 2018 in Soldotna, Alaska is hereby postponed indefinitely due to blocking unfair labor practice charges in Cases 19-CA-212764. 212776, 212798, 212813 and 214770.

Dated at Seattle, Washington on the 20th day of March 2018.

/s/ Ronald K. Hooks

RONALD K. HOOKS, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2ND AVE STE 2948
SEATTLE, WA 98174-1006

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Apple Bus Company,
Employer, Case No. 19-RD-216636
and

General Teamsters Local 959,
Union,
and

Elizabeth Chase,
Petitioner.

PETITIONER'S REQUEST FOR REVIEW

INTRODUCTION

Petitioner Elizabeth Chase ("Petitioner" or "Chase") is employed by Apple Bus Company ("Employer") within a bargaining unit exclusively represented by General Teamsters Local 959 ("Union"). On March 15, 2018, Chase filed this case, her *second* decertification petition, supported by a *majority* "showing of interest." (Chase's first decertification petition, Case No. 19-RD-203378, was dismissed at the Union's behest by the Regional Director and this Board as "premature," due to the controversial "successor bar" rule). On March 20, 2018, the Regional Director again halted the decertification election process at the Union's behest (*see* Ex. A), based on unfair labor practice ("ULP") "blocking charges" charges filed against the Employer one month before the successor bar's one year expiration. (Ex. B).

The Union's blocking charges are without merit, and they should not be allowed to delay the decertification election even assuming, *arguendo*, they have merit. For the second time in eight months the Union is strategically using and abusing the Board's "bars" and "blocking"

rules to prevent an election in the face of a majority showing of interest. Here, the Regional Director found the Union's bare and self-serving allegations sufficient to halt a valid decertification election proceeding. The Regional Director made his decision without holding a hearing, without a threshold determination as to the blocking charges' legitimacy, and without ordering the Union to prove a "causal nexus" between the alleged Employer infractions and the employees' desire to be rid of this Union. *See* NLRB Casehandling Manual Part Two, Representation Proceedings at 11730-31; *see also Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004). By these actions, the Regional Director gave unwarranted credence to the Union's gossamer allegations while diminishing and denying Petitioner's and other employees' *statutory rights* to decide their workplace representative under NLRA Sections 7 and 9, 29 U.S.C. §§ 157 and 159.

Pursuant to NLRB Rules and Regulations §§ 102.67 and 102.71, Elizabeth Chase submits this Request for Review of the Regional Director's election block because it raises "compelling reasons for reconsideration of [a] . . . Board rule or policy." Rules & Regulations § 102.71(a)(1), (2). The current "blocking charge" rules effectively halt decertification elections simply based upon a union's filing of a ULP charge, regardless of its merits, which is directly contrary to the Act's purpose. Petitioner urges the Board to re-evaluate its continued allowance of strategic, predictable and dilatory "blocking charges" that allow unions to prevent decertification elections.

The Board exists to *conduct* elections and thereby vindicate employees' rights under the Act to choose or reject union representation, not to arbitrarily suspend elections at the unilateral behest of a union that fears an election loss. *C.f. General Shoe Corp.*, 77 NLRB 124, 126 (1948) (holding the Board should exercise its power to set aside an election

"sparingly" because it cannot "police the details surrounding every election" and the secrecy in Board elections empowers employees to express their true convictions). The Board's "blocking charge" rules deny employees their fundamental NLRA Sections 7 and 9 rights and allow unions to "game the system" and strategically delay all *decertification* elections—in contrast to the Board's recent policy of rushing all *certification* petitions to an election while prohibiting "blocks" under any circumstances. *See Representation-Case Procedures*, 79 Fed. Reg. 74308, 74430–74460 (Dec. 15, 2014).

The Board should terminate this double-standard, order Petitioner's election to proceed, and follow former Chairman Miscimarra's urging to implement a wholesale revision of the "blocking charge" rules. *Cablevision Systems Corp.*, Case 29-RD-138839, *1 n.1 (June 30, 2016) (Order Denying Review); *see also Valley Hosp. Med. Ctr., Inc. & SEIU Local 1107*, 28-RD-192131, 2017 WL 2963204 (Order Denying Review, July 6, 2017); *Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 426 (4th Cir. 2001) (noting Section 7 "guards with equal jealousy employees' selection of the union of their choice and their decision not to be represented at all").

Petitioner asks the Board to: grant her Request for Review; immediately reactivate her decertification petition; and overrule, nullify, or substantially revise its decertification "blocking charge" rules. By removing the Board-created shelter for incumbent unions to "game the system" and unilaterally block decertification elections, the Board will restore the protection of employees' right to choose or reject unionization. Unions should not be permitted to retain power through gamesmanship despite their loss of employee support.

FACTS

From 2008 until June 2017, First Student, Inc. employed Mrs. Chase and her fellow bargaining unit employees in Alaska. *Apple Bus Co.*, Case No. 19-RD-203378, Regional Director's Decision and Order at *1 (Aug. 28, 2017) (*see* Ex. C), pet. for review denied, 2017 WL 6403493 (Dec. 14, 2017). First Student hired these employees to provide school bus transportation services pursuant to a contract it held with the Kenai Peninsula Borough School District. On October 20, 2016, the School District awarded the transportation contract to the Employer for the 2017–2018 school year, effective July 1, 2017. First Student ceased to be the employer at that time. *Id.* at *2.

On July 1, 2017, the Employer became a successor to First Student. *Id.* at *2. The Employer and Union first met on February 24, 2017 to begin negotiations on a new collective bargaining agreement. *Id.* Negotiations continued by telephone and in person in April, May, June, July 2017, and thereafter. *Id.*at *2–*3. On July 31, 2017, Ms. Chase filed her first decertification petition, in Case No. 19-RD-203378. *Id.* at *3. On August 28, 2017, the Regional Director dismissed her first petition, based on the "successor bar" doctrine adopted by a divided Board in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011). *Id.* at *3–*5. The Board denied review. *See* 2017 WL 6403493 (Dec. 14, 2017).

Under the logic of the Regional Director's Decision and Order of August 28, 2017 (Ex. C), the one year "successor bar" expired on February 24, 2018. Acting as quickly as the law would allow, Chase presented the Employer with a majority decertification petition on February 26, 2018, asking it to withdraw recognition and cease bargaining with the Union pursuant to *Dura Art Stone, Inc.*, 346 NLRB 149 (2005). The Employer refused to do so, and Chase filed a ULP charge against it in Case No. 19-CA-216719, which remains pending. (Ex.

D). In addition, Chase filed this second decertification petition on March 15, 2018, supported by a majority of bargaining unit employees. In the month before the "successor bar's" expiration, with knowledge that it had lost support and that its grasp on power was tenuous, the Union filed four ULP charges against the Employer, alleging things like refusal to furnish information, unilateral modifications of the contract, and refusal to bargain. *See* Ex. B, Union ULP charges in Case Nos. 19-CA-212764, 19-CA-212776, 19-CA-212798, 19-CA-212813 (filed Jan. 5, 2018). It is reasonable to assume that most employees were unaware of the status of negotiations, and the Union has never proven that employees had such knowledge. Eleven days before the successor bar's expiration, the Union filed yet another ULP charge, once again alleging the Employer's refusal to bargain and unilateral modification of the contract. *Apple Bus Co.*, Case No. 19-CA-214770 (Feb. 13, 2018) (Ex. B at 5).

There is no merit to the Union's allegations, and the Employer is vigorously contesting those ULP charges. But, even if there were merit, there is no causal nexus between the allegations and the current decertification petition. Indeed, as demonstrated by the first decertification petition filed on July 31, 2017 in Case No. 19-RD-203378, this Union has always faced significant (if not majority) employee opposition. Yet only five days after the filing of Chase's second and current decertification petition, the Regional Director mechanically halted the election based on the blocking charge rules. Despite her valid election petition, Petitioner's and other employees' exercise of their Section 7 and 9 rights have been postponed and essentially nullified by the Union's unfounded and unproven allegations.

ARGUMENT

I. The current "blocking charge" policy is inconsistent with the Act's purpose and should be overruled.

Employees enjoy a statutory *right* to petition for a decertification election under NLRA Section 9(c)(1)(A)(ii), which should not be trampled by arbitrary rules, "bars," or "blocks" that prevent their expression of free choice. Employees' Section 7 right of free choice is the NLRA's paramount concern. *Pattern Makers' League v. NLRB*, 473 U.S. 95, 104 (1985); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992) (noting Section 7 confers rights only on employees, not unions and their organizers); *see also Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) (noting employee free choice is the "core principle of the Act" (quotation marks and citation omitted)). An NLRB conducted secret-ballot election is the preferred forum for employees to exercise their free choice rights, as such elections enhance industrial peace by ensuring employees actually support the workplace representative empowered exclusively to speak for them. *See Levitz Furniture Co. of the Pac., Inc.*, 333 NLRB 717, 725–26 (2001). Yet, the "blocking charge" policy sacrifices employees' free choice rights based on an unpopular incumbent union's whims and strategic considerations as it clings to power.

The Board's "blocking charge" policy operates under a system of "presumptions" that prevent employees from exercising their Sections 7 and 9(c)(1)(A)(ii) statutory rights to hold a decertification election almost every time a union files any ULP charge against an employer. When a blocking charge is filed, the Regional Directors invariably and automatically hold the decertification proceeding in abeyance, which is precisely what happened in this case. Here, the Regional Director's reflexive application of the "blocking

charge" policy ignores Petitioner's and her fellow bargaining unit members' longstanding wish to be free from the Union's representation, irrespective of any alleged Employer infractions. In automatically blocking this election, the Regional Director wrongly treats Petitioner and her fellow employees like children who cannot make up their own minds. Even assuming, *arguendo*, the Employer actually committed the technical violations alleged in the ULP charges, "[t]he wrongs of the parent should not be visited on the children, and the violations of [the employer] should not be visited on these employees." *Overnite Transp. Co.*, 333 NLRB 1392, 1398 (2001) (Member Hurtgen, dissenting); *see also Cablevision Systems Corp.*, Case 29-RD-138839 (June 30, 2016) (Order Denying Review) (Member Miscimarra, dissenting).

Indeed, the Board's "blocking charge" policy often denies decertification elections even where, as here, the employees may not be aware of the alleged employer misconduct, or where their longstanding disaffection from the union springs from wholly independent sources that predate the alleged infractions. Use of "presumptions" to halt decertification elections serves only to entrench unpopular incumbent unions, thereby forcing an unwanted representative on employees. Judge Sentelle's concurrence in *Lee Lumber* specifically highlights the inequitable nature of the Board's policies. 117 F.3d at 1463–64.

a. The "blocking charge" policy's application to the current case illustrates its impingement on employees' rights.

This case illustrates the current "blocking charge" policy's absurdity because the Employer perpetrated no "wrongs" and the Petitioner and her colleagues are not "victims." Not only are the Union's allegations in the ULP charges minor and baseless, but the Union strategically filed them to indefinitely postpone a decertification election rather than to

challenge actual wrongs to employees, making application of the "blocking charge" policy even more egregious.

Application of the *Master Slack Corporation* factors compel a determination that the ULP charges at issue should not block the election. 271 NLRB 78 (1984). *Master Slack* requires an analysis of several factors including: "[1] the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; [2] any possible tendency to cause employee disaffection from the union; and [3] the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union." *Id.* at 84 (citing *Olson Bodies, Inc.*, 206 NLRB 779 (1973)).

Here, the Union's ULP charges do not allege serious unilateral changes that are essential terms and conditions of employment. The violation types that cause dissatisfaction "are those involving coercive conduct such as discharge, withholding benefits, and threats to shutdown the company operation." *Tenneco Auto, Inc. v. NLRB*, 716 F.3d 640, 650 (D.C. Cir. 2013) (finding employer's refusal to provide union addresses of replacement employees, requirement that employees obtain company permission before posting materials, and discipline of union advocate did not taint petition); *see also Goya Foods*, 347 NLRB 1118, 1122 (2006) (finding hallmark violations are those "issues that lead employees to seek union representation").

Here, the ULP charges blocking the election are a grab bag of allegations and innuendoes concerning things like the Employer's refusal to furnish information, the Employer's mistaken awarding of federal holiday pay, the Employer's unavailability to meet on certain dates, and a generalized failure of the Employer to bargain (despite many bargaining sessions having been held). These allegations are nowhere close to a "hallmark

violation" such as "threats to shutdown the company operation." *Tenneco*, 716 F.3d at 650. Nor is the Employer's conduct the type that encourages employees "to seek union representation." *Goya Foods*, 347 NLRB at 1122. There is no evidence that Apple Bus employees even knew of the underlying events occurring at the bargaining table. Any way the Union's charges are evaluated, they lack merit, and, even if they do not, they are insufficient to block the election and nullify employees' rights under NLRA Sections 7 and 9.

Finally, it should be noted that this bargaining unit consists largely of school bus drivers, most of whom do not work for the Employer during the summer months. In addition to allowing the Union to game the system and block elections at will for strategic reasons, the Board's blocking charge rules are being abused to delay the election and drag it into the summer months, when most employees will be scattered to the winds and not present to cast a vote. This strategic delay may be to the Union's advantage, but it is certainly not an advantage to the Petitioner and other employees whose rights are being trampled.

b. The "blocking charge" policy infringes on employees' rights and should be overhauled.

The Board's "blocking charge" practice is not governed by statute. Rather, its creation and application lies within the Board's discretion to effectuate the Act's policies. *American Metal Prods. Co.*, 139 NLRB 601, 604–05 (1962); *see also* NLRB Casehandling Manual (Part Two) Representation Sec. 11730 et seq. (setting forth in detail the "blocking charge" procedures). Discretionary Board policies such as these should be reevaluated when industrial conditions warrant. *See, e.g.*, *IBM Corp.*, 341 NLRB 1288, 1291 (2004) (holding the Board has a duty to adapt the Act to "changing patterns of industrial life" and the special

function of applying the Act's general provisions to the "complexities of industrial life") (citation omitted)). Given that a prior Board majority decided to rush all certification petitions to fast elections and hold objections and challenges until afterwards, 79 Fed. Reg. 74308 (Dec. 15, 2014), the current Board should adopt a neutral and balanced policy that will treat decertifications the same way.

The time has come to apply the election rules fairly, across the board, to both certification and decertification elections. This is especially true since the Board's continued practice of delaying and denying only decertification elections based upon blocking charges has faced severe judicial criticism. In *NLRB v. Minute Maid Corp.*, the Fifth Circuit stated:

> [T]he Board is [not] relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold otherwise would put the union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented.

283 F.2d 705, 710 (5th Cir. 1960); *see also NLRB v. Gebhardt-Vogel Tanning Co.*, 389 F.2d 71, 75 (7th Cir. 1968) (quoting *Minute Maid Corp.*, 283 F.2d at 710); *Templeton v. Dixie Printing Co.,* 444 F.2d 1064 (5th Cir. 1971) (rejecting application of blocking charge policy); *Surratt v. NLRB,* 463 F.2d 378 (5th Cir. 1972) (same); *T-Mobile v. NLRB,* D.C. Cir. Case No. 17-1065 (March 28, 2018) (Sentelle, J., dissenting) (Board's blocking charge policy causes "unfair prejudice").

Here, the Board should take administrative notice of its own statistics, which show approximately 30% of decertification petitions are "blocked," whereas certification elections are *never* blocked for any reason. *See* NLRB, *Annual Review of Revised R-Case Rules*, https://www.nlrb.gov/sites/default/files/attachments/news-story/node-4680/R-

Case%20Annual%20Review.pdf. Rather, the Board conducts all certification elections first, and settles any objections or challenges afterwards. If the Board can rush certification petitions to quick elections by holding all objections and challenges until afterwards, it surely can do the same for decertification petitions. It is time the Board overrules its discriminatory "blocking charge" rules, which apply only to employees seeking to exercise their right to refrain from supporting a union. The Board must create a system whereby employees seeking decertification elections are afforded the same rights as employees seeking a certification election.

In short, the Board should order Region 19 to proceed to an immediate election without further delay. Petitioners and her colleagues are not sheep, but responsible, free-thinking individuals who should be able to make their own free choice about unionization. The employees' paramount Section 7 and 9 rights are at stake, and their rights should not be so cavalierly discarded simply because their Employer is alleged to have committed minor or technical mistakes under the labor laws. Petitioner urges the Board to overrule or overhaul its "blocking charge" policies to protect the true touchstone of the Act—*employees*' paramount Section 7 free choice rights. *Int'l Ladies Garment Workers v. NLRB*, 366 U.S. 731, 737 (1961) (holding "there could be no clearer abridgment of § 7 of the Act" than for a union and employer to enter into a collective bargaining relationship when the union lacks a majority of employees support).

II. Alternatively, the Board should require the Union to meet its burden of proof, in an adversarial hearing, that there exists a "causal nexus" between the alleged Employer infractions and the employees' desire to decertify.

In order for an unfair labor practice to taint a petition or block an election, there must be a "causal nexus" between the Employer's actions and the employees' dissatisfaction with

the Union. *Master Slack Corporation*, 271 NLRB 78 (1984). But here, there has been no such showing and the Regional Director did not compel the Union to make such a showing. We are left with only speculation about the employees' motivations for wanting to oust the Union.

Thus, at the very least, the Board should require the Regional Director to hold a *Saint-Gobain* hearing as a precondition to blocking an election based on Union ULP charges. *Saint Gobain Abrasives, Inc.*, 342 NLRB at 434. At such an adversarial hearing the Union will be required to meet its burden of proof that a "causal nexus" exists. *See, e.g.*, *Roosevelt Memorial Park, Inc.*, 187 NLRB 517, 517–18 (1970) (holding a party asserting a bar's existence bears the burden of proof). As the Board noted in *Saint-Gobain*, "it is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights." *Id.* But due to the lack of a *Saint-Gobain* hearing all this record contains is speculation.

The Regional Director erred by reflexively blocking this election and by failing to require the Union to prove, in an adversarial hearing, the "causal nexus" between the allegations in its unfair labor practice charges and the employees' continued disaffection. Petitioner's and her fellow employees' Section 7 and 9 rights have been diminished, if not destroyed, by this process.

CONCLUSION

The Board should grant Petitioner's Request for Review and order the Regional Director to process this decertification petition. In addition, the Board should overrule or substantially overhaul its "blocking charge" policy, which unions use and abuse to arbitrarily

delay and deny decertification petitions.

Respectfully submitted,

/s/ Amanda K. Freeman

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2018, a true and correct copy of the foregoing Request for Review was filed with the Executive Secretary using the NLRB e-filing system, and copies were sent to the following parties via e-mail, as noted:

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPLE BUS COMPANY	)	
	)	
Employer	)	
	)	
and	)	Case No. 19-RD-216636
	)	
GENERAL TEAMSTERS LOCAL 959	)	
	)	
Union	)	
	)	
and	)	
	)	
ELIZABETH CHASE	)	
	)	
Petitioner	)	

UNION'S OPPOSITION TO REQUEST FOR REVIEW

I. INTRODUCTION

On March 15, 2018, Elizabeth Chase (Chase), filed her second decertification petition. On March 20, 2018, the Regional Director issued an Order Postponing Hearing Indefinitely due to five unfair labor practice (ULP) charges filed by the Union. Chase then filed a Request For Review of the Order. Chase's first decertification petition was dismissed by the Regional Director on the basis of *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), and the successor bar doctrine.

Chase cites National Labor Relations Board (Board) Rules and Regulations 102.67 and 102.71 and alleges compelling reasons for reconsideration of a Board rule or policy (Request at 2). There are no compelling reasons to grant Chase's Request For Review. Chase's decertification petition was not dismissed or denied by the Regional Director. It was postponed pending investigation and decisions on the Union's ULP charges. The Union files this Opposition and incorporates by reference the Decision and Order (DO) of the Regional Director in Case 19-RD-203378, Chase's first decertification petition (Exhibit C to Request).

II. FACTS

From 2008-2017, the Union represented First Student, Inc. employees performing services for the Kenai Peninsula Borough School District. DO at 1. After being awarded a bid, Apple Bus has performed the services since July 1, 2017. The Union and Apple Bus met on February 24, 2017 to discuss a probable collective bargaining relationship. For several months, the Union asked Apple Bus to be bound by the First Student collective bargaining agreement (CBA) but Apple Bus refused. The Union rejected an agreement presented by Apple Bus. DO at 2.

On June 8, 2017, Apple Bus mailed job offer letters to 105 of the 126 former First Student employees. DO at 2. By August 11, 2017, 98 former First Student employees and 4 persons who had not worked for First Student accepted positions with Apple Bus. Apple Bus expected to employ 115 Bargaining Unit employees by August 14, 2017. DO at 3.

On July 18 and 19, 2017, the Union and Apple Bus first met to bargain for a new CBA. Tentative agreement was reached on Declaration of Purpose, Recognition, Maintenance of Standards, and Union Stewards articles. DO at 2-3. The Union and Apple Bus met again on August 9, 10, and 11, 2017. DO at 3. Further negotiations have been held since then. The Union asked to schedule more days for negotiations but Apple Bus usually only agreed to meet two days a month, refused to schedule dates past the next month, and canceled some negotiation sessions.

Apple Bus sent out job offer letters in June 2017, hired a majority of Bargaining Unit employees in July 2017 at the earliest, and did not have a majority of Bargaining Unit employees hired and on the job until August 14, 2017. DO at 2-3. Based on these facts, and notwithstanding the Regional Director's DO, the successor bar should be measured from no earlier than the date of the first substantive bargaining meeting of the Union and Apple Bus on July 18, 2017.

Apple Bus never questioned the Union's majority status and agreed to a Recognition article. DO at 3. Chase argues that most employees were unaware of the status of negotiations

(Request at 5, 7, 9). However, four Apple Bus employees have been on the Union negotiating team and directly involved when the Union and Apple Bus negotiate. The Union has also kept employees informed through meetings, events, gatherings, publications, and social media.

III. ARGUMENT IN OPPOSITION TO REVIEW

Webster's II New Riverside University Dictionary defines "compel" or "compelling" as, "1. To force, drive, or constrain, 2. To make necessary." Chase wishes to see the law and blocking charge policy changed but there are no compelling reasons to change the policy.

A. The successor bar provides stability for a bargaining relationship

UGL restored the "successor bar" doctrine. Under the doctrine, when a successor employer acts in accordance with its legal obligation to recognize an incumbent representative of its employees, that representative is entitled to represent the employees in collective bargaining with their new employer for a reasonable period of time, without challenge to its representative status. *UGL* at 801, citing *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999).

Analogous bar doctrines are well established in labor law, based on the principle that "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed." The bar promotes a primary goal of the National Labor Relations Act (NLRA) by stabilizing labor-management relationships and promoting collective bargaining, without interfering with the freedom of employees to periodically select a new representative or reject representation. *UGL* at 801.

The *UGL* Board observed that the transition from one employer to another threatens to seriously destabilize collective bargaining, even when the new employer must recognize the incumbent union. The new employer is free to choose (on any non-discriminatory basis) which of the predecessor's employees it will keep and which will go. It is free to reject an existing CBA. It will often be free to establish unilaterally all initial terms and conditions of employment. In a

setting where everything employees have achieved through collective bargaining may be swept aside, the union must deal with a new employer and, at the same time, persuade employees that it can still effectively represent them. *UGL* at 805.

On the effect of a successor situation on employees, *UGL* noted, "After being hired by a new company ..., employees initially will be concerned primarily with maintaining their new jobs. *In fact, they might be inclined to shun support for their former union, especially if they believe that such support will jeopardize their jobs with the successor....* Without the presumptions of majority support ..., an employer could use a successor enterprise as a way of getting rid of a labor contract and of exploiting the employees' hesitant attitude towards the union to eliminate its continuing presence." *UGL* at 803 (citation omitted).

B. The successor bar protects employee free choice

The *UGL* Board noted that the *St. Elizabeth Manor* Board rejected the view that the "successor bar" gave too little weight to employee freedom of choice, which it recognized as a "bedrock principle of the statute." The crucial aspect of the balance struck by the successor bar was that the bar "extends for a 'reasonable period,' not in perpetuity." *UGL* at 804, 808. *UGL* defined the reasonable period of bargaining mandated by the successor bar. Where the successor employer recognizes the union, but unilaterally announces and establishes initial terms and conditions of employment before proceeding to bargain, the "reasonable period of bargaining" will be a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the union and the employer. The Board will apply the *Lee Lumber* analysis to determine whether the period has elapsed. Where the parties are bargaining for an initial contract, because the destabilizing factors associated with successorship are at their height, a longer insulated period is appropriate. *UGL* at 808-809.

C. The blocking charge policy is consistent with the purpose of the NLRA and does not impinge on employee rights; no adversarial hearing is required or needed.

Chase alleges that the Regional Director did not hold a hearing, there was no proof of a "causal nexus," and the blocking charge rules halt decertification elections simply based on a union filing a ULP charge, regardless of its merits (Request at 2). Chase claims the blocking charge rules allow unions to delay all decertification elections (Request at 3). Chase cynically and inaccurately portrays the Regional Director's decision and Order as automatic or reflexive in response to the Union filing blocking charges. Chase fails to point out the requirements and guidance of the Board's Casehandling Manual Part Two Representation Proceedings:

11730 Blocking Charge Policy – Generally

The filing of a charge does not automatically cause a petition to be held in abeyance. When a party to a representation proceeding files an unfair labor practice charge and desires to block the processing of the petition, the party must file a request that the petition be blocked and must simultaneously file a written offer of proof in support of the charge that contains the names of the witnesses and a summary of each witness's anticipated testimony … The charging party requesting to block the processing of the petition must promptly make its witnesses available. If the regional director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employees free choice in an election or would be inherently inconsistent with the petition itself, … the regional director shall continue to process the petition and conduct the election where appropriate … [T]he blocking charge policy is premised solely on the Agency's intention to protect the free choice of employees in the election process.

As stated, the blocking charge policy is intended to protect the free choice of employees in the election process. The policy began in 1937 "as part of the Board's function of determining whether an election will effectuate the policies of the Act." *American Metal Products*, 139 NLRB 601 (1962); *U.S. Coal & Coke*, 3 NLRB 398 (1937). The Board's principal role in elections is to ensure that employees are able to express their choice free of unlawful coercion. The policy aims to ensure that interference with employee choice is remedied before an election. The policy gives a regional director discretion to not process a petition in the face of a pending ULP charge if the regional director believes that employee free choice is likely to be impaired. Here, it must be

assumed that the Regional Director properly followed the above requirements and guidance and sought to protect employee free choice in the election process.

Chase's attempt (Request at 2) to rely on *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004), is misguided. There the Regional Director dismissed a decertification petition without a hearing. The Board held that a hearing was a prerequisite to denying the petition. At 434. Here, the Regional Director did not deny or dismiss Chase's petition. A *Saint Gobain* hearing does not have to be separate from the ULP hearing. A regional director may use the record in an ULP hearing in making a *Saint Gobain* determination. See, e.g., *NTN-Bower Corp.*, 10 RD 1504 (Order, May 20, 2011). *Saint Gobain* did not address situations, like Apple Bus, where the employer encourages decertification or surface bargains with the Union.

Chase relies on minority and dissenting Board and legal views (Request at 3) and Orders of no help to her. To the contrary, the recent Order in *Valley Hospital Medical Center, Inc. and SEIU Local 1107*, Case 28-RD-192131 (Order July 6, 2017), denying Requests For Review of the Regional Director's decision to hold the decertification petition in abeyance pending the investigations of ULP charges, noted:

> Contrary to our colleague's criticism of the Board's longstanding blocking charge policy, we find it continues to serve a valuable function. As explained in our 2014 rulemaking, the blocking charge policy is critical to safeguarding employees' exercise of free choice. See Representation-Case Procedures, 79 Fed. Reg. 74308, at 74418-74420, 74428-74429 (Dec. 15, 2014). Indeed, "[i]t advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference." Id. at 74429. Nevertheless, in response to commentary and our colleague's concerns, the Election Rule modified the policy to limit opportunities for unnecessary delay and abuse. Id. at 74419-20, 74490.
>
> We also observe that in upholding the Election Rule, the U.S. Court of Appeals for the Fifth Circuit recently rejected an argument similar to our colleague's ... and found that the Board did not act arbitrarily by implementing various regulatory changes resulting in more expeditious processing of representation petitions without eliminating the blocking charge policy altogether. See *Associated Builders and Contractors of Texas, Inc. v. NLRB*, 826 F.3d 215, 228 (5th Cir. 2016). In doing so, the court cited with approval its prior

precedent in *Bishop v. NLRB*, 502 F.2d 1024 (5th Cir. 1974), wherein the court set forth the following explanation for why the blocking charge policy is justified:

> If the employer has in fact committed unfair labor practices and has thereby succeeded in undermining union sentiment, it would surely controvert the spirit of the Act to allow the employer to profit by his own wrongdoing. In the absence of the 'blocking charge' rule, many of the NLRB's sanctions against employers who are guilty of misconduct would lose all meaning....
>
> Nor is the situation necessarily different where the decertification petition is submitted by employees instead of the employer or a rival union. Where a majority of the employees in a unit genuinely desire to rid themselves of the certified union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.

Id. At 1029 (quoting *NLRB v. Big Three Industries, Inc.*, 497 F.2d 43, 51-52 (5th Cir. 1974)).

Chairman Miscimarra favors a reconsideration of the Board's blocking charge doctrine for reasons expressed in his and former Member Johnson's dissenting views to the Board's Election Rule, 79 Fed. Reg. 74308 at 74430-74460 (Dec. 15, 2014), but he acknowledges that the Board has declined to materially change its blocking charge doctrine....

The Union has negotiated with Apple Bus to try to reach agreement on a first CBA. The Union has been negotiating virtually everything and the issues are complex. Apple Bus has, in an effort to "run out the successor bar clock" and undermine union sentiment, delayed providing information the Union needs to negotiate, failed to cooperate, been unwilling to reasonably schedule negotiations sessions, and engaged in other acts that caused the Union to file the ULP charges. Apple Bus has hindered the parties' reaching a CBA in the limited time allotted for the Union to do so. Due to the actions of Apple Bus, the Union needs more time to reach agreement on the terms of a first CBA. Chase's second decertification petition would deny that additional time. The blocking charges and Regional Director's Order are appropriate.

Chase alleges (Request at 1) that the blocking charges are without merit. The Union filed each blocking charge in good faith based on the merits. The Board has traditionally had considerable discretion to adopt practices to effectuate the policies of the NLRA. *American Metal Products*, 139 NLRB 601 (1962). Apple Bus requested review of the Regional Director's

dismissal of Chase's first decertification petition. Employers are not entitled to an election caused by their unlawful conduct. *Frank Bros. v. NLRB*, 321 US 702 (1944) (election not appropriate remedy where union lost majority after employer's wrongful refusal to bargain); *Brooks v. NLRB*, 348 US 96 (1954) (employer's refusal to bargain may not be rewarded with the decertification it seeks). The blocking charge policy has been approved by Federal Courts. *Associated Builders and Contractors of Texas, Inc.*, 826 F3d 215, 228 (5th Cir. 2016); *Bishop v. NLRB*, 502 F2d 1024 (5th Cir. 1974); *NLRB v. Big Three Industries, Inc.*, 497 F2d 43, 51-52 (5th Cir. 1974).

The Union should not be forced to proceed to an election when there are substantial concerns that unfair labor practices by Apple Bus have undermined employee free choice. A tainted election may cause additional damage that cannot be remedied by rerunning an election. The blocking charge policy saves the Board from wasting resources on a "contingent" election and forces remediation of the ULPs before an election. No policy of the NLRA is advanced by conducting an election unless employees can vote without unlawful interference. The blocking charge policy protects against frivolous charges, as indicated by statistics showing a large decline in dismissal of decertification petitions since the new rule went into effect. "Unfair labor practice charges that warrant blocking an election involve conduct that is inconsistent with a free and fair election … there is no inconsistency between the final rule's preservation of that basic policy and the other changes made by the final rule." 79 Fed. Reg. 74429 (December 14, 2014).

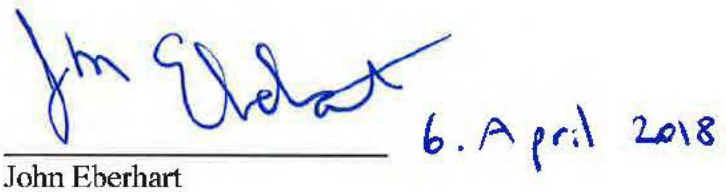
Chase alleges that her second decertification petition was supported by a majority showing of interest. The Union has no knowledge that it has allegedly lost the support of a majority of Bargaining Unit employees. The Union does not know the details of Chase's alleged petition, how or when signatures were gathered, how many signatures are not valid, and other factors. Apple Bus recognized the Union as the representative of the employees. It has not been proved that the

Union does not represent the majority of Bargaining Unit employees. An actual loss of majority support needs to be proved, not simply doubt about majority status, before an employer can withdraw recognition from a union. *UGL* at 806, fn. 21 (citation omitted). As addressed in *Bishop v. NLRB*, where the decertification petition is submitted by employees, where a majority of the employees in a unit genuinely desire to rid themselves of the union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.

IV. CONCLUSION

For the above and other reasons, this Board should deny Chase's Request for Review.

Respectfully Submitted,



6. April 2018

John Eberhart
General Counsel
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jeberhart@akteamsters.com

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2018, a true and correct copy of the Union's Opposition to Request for Review was filed electronically with the Executive Secretary using the NLRB e-filing system and copies were sent by email to the following:

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John Eberhart
General Counsel
General Teamsters Local 959

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPLE BUS COMPANY	)	
	)	
Employer	)	
	)	
and	)	**Case No. 19-RD-203378**
	)	
GENERAL TEAMSTERS LOCAL 959	)	
	)	
Union	)	
	)	
and	)	
	)	
ELIZABETH CHASE	)	
	)	
Petitioner	)	

EMPLOYER'S RESPONSE TO THE PETITIONER'S REQUEST FOR REVIEW AND UNION'S BRIEF IN OPPOSITION

I. INTRODUCTION

This is Ms. Chase's second Petition for Decertification ("RD Petition"). The first was dismissed on August 28, 2017 because only five (5) months of bargaining had taken place between February 24, 2017 and July 31, 2017 (the date the RD Petition was filed)[1]. At the time the Petitioner's second RD Petition was filed, over thirteen (13) months of bargaining has taken place. Despite the RD Petition, the Employer continues to bargain with the Union. The Union filed four unfair labor practice charges against the Employer, slightly over one (1) month before the successor bar expired. The charges lack merit.

[1] The Union argues bargaining did not start until July, 2017. The Regional Director, in his August 28, 2017 decision in Case No. 19-RD-203378, found otherwise. Indeed, it was the Employer who approached the Union on February 26, 2017 to commence bargaining but the Union has engaged in hard bargaining for many months, insisting the Employer agree to the predecessor's agreement.

The Regional Director blocked action on the RD Petition because of the Union's charges. Although the charges are over ninety (90) days old,[2] the investigation is not yet complete. The Employer is confident it has not committed any unfair labor practices – and certainly none that should form the basis for blocking any election. The delay necessarily prejudices Petitioner's right to a vote as this unit of school bus drivers and monitors will leave Alaska's Kanai Peninsula for the summer on, or shortly after May 13 – making an election nearly impossible until school commences again in late August.

II. FACTS

A. Summary of Bargaining.

The Employer has bargained in good faith with the Union. Despite the Union's hard-bargaining and, until recently, insisting on language based on the terms of its agreement with the predecessor employer, the parties have reached agreement on twenty-seven (27) non-economic articles. Recently, progress has stalled because the Union is *insisting* on package proposals that include mandatory dues for all unit employees despite the Employer's concern that mandatory dues is inappropriate given the RD Petition.

B. The Untrue Statements In The Union's Opposition To Review.

The Union takes liberties with the facts in its Brief in Opposition. Besides its obvious inconsistencies with the Regional Director's August 28, 2017 findings about the bargaining

[2] The initial three charges were filed on January 5, 2018 alleging: 1) unilateral charges (19-CA-212776); 2) failure to meet at reasonable times (19-CA-212813); and 3) failure to provide information (19-CA-212764). Then on February 13, 2018, the Union filed a fourth charge (19-CA-214770) alleging essentially the same as charge 19-CA-212776. The February 13 charge merely detailed the alleged unilateral charges referred to in the very brief charge on unilateral action (Case 19-CA-212776). The Employer believes the February 13 charge, filed less than two weeks before the anniversary date of bargaining, involving events which occurred long before the January charges are further evidence Union's goal was to block Petitioner's effort to obtain an election.

history, which are too numerous to detail, there are two important incorrect statements in the Union's brief that need to be addressed and refuted.

First, the Union falsely accused the Employer of "encourag(ing) decertification. . "(p. 5 of the Union Brief). The Union did file a charge on August 17, 2017 alleging the Employer coerced its employees by "aiding and supporting the July 31, 2017) decertification petition." (Ex. 1 attached). But that charge was withdrawn (and not refiled) on September 6, 2017. (Ex. 2 attached). The Union has not filed any subsequent charges alleging the Employer aided or supported the second RD Petition.

Second, the Union also alleges the Employer has engaged in "surface bargaining". (p. 5 of the Union Brief). But NONE OF THE UNION'S FOUR CHARGES assert such an allegation. Further, such an allegation is absurd when it was the Employer who first approached the Union – before it commenced operations – trying to get an agreement with the Union. It is instead the Union, as the Regional Director found in his August 28, 2017 decision, that was engaged in hard bargaining, refusing for more than six months to budge on its demand that the Employer agree to the predecessor's labor agreement. (*See* Regional Director's Finding of Fact in August 28, 2017 decision).

III. ARGUMENT

A. The Union's Unfair Labor Practices Charges Should Not Be A Basis To Block The Petition.

The Employer has not committed any unfair labor practices. Further, given the fact Petitioner filed her first decertification petition on July 31, 2017, before any of the alleged unfair labor practices were committed, the Region should look with a jaundiced eye toward any contention that the alleged unfair labor practices have somehow influenced employee choices on representation. The Petitioner and her co-workers have now been represented by the Union for

ten (10) years! (*See* p.1 Decision and Order 8-28-17 Case 19-RD-203378). The Employer believes its employees have a right to decide whether to be represented. The Employer has not—and will not--interfere with their choice!

There is no basis for the unfair labor practice allegations. The most significant issues allege unilateral changes. One was a payment of Labor Day holiday pay in early September which was a clerical error by the Employer's H.R. Department because Labor Day is paid at all the other locations for the Employer – but Alaska. The Employer has since advised employees and the Union it was a "start-up error" and apologized. If it was so serious an unfair labor practice, why did the Union wait four months to file the charge? There are also unsupported allegations of unilateral charges. The evidence shows otherwise. What actually occurred was a delay in paying training pay and stand-by pay for a few months but no unilateral change. These delays only involved a total of eleven (11) out of the approximately one hundred fifteen (115) unit employees.(five trainers and six stand-by employees). These payments were part of the initial terms of employment adopted from the predecessor—and supplied by the Union!

The other allegations involve alleged requests for information. The Employer has provided all requested information or instructions on how the Union could obtain information not in the Employer's possession (*e.g.*, the Union repeatedly requested who were Blue Cross's "preferred providers" and the Employer repeatedly gave the Union a website address where both the Union and Company could obtain the list—but the Union contends this response is insufficient).

The Employer has bargained with the Union for over thirteen (13) months. In January alone, the parties met four (4) days for full-day sessions. Yet little progress was achieved because the Union is insisting on mandatory dues for the entire bargaining unit. One of the

Employer's representations, who attended negotiations from August to March, was a court reporter and took detailed notes of the sessions. Those typed notes demonstrate it is the Union's hard bargaining and abusive behavior towards the Company's lead negotiator (the Union concedes they "don't like her") which has been the cause of any delay in resolving an agreement—if one can be reached.

B. The Petitioner's Unfair Labor Practice Charge Against The Employer Favors Direction Of An Election.

On March 16, 2018, Petitioner filed an 8(a)(2) charge against the Employer. Petitioner alleges the Employer, by continuing to bargain with the Union, after being provided the decertification petition signed by more than half of the bargaining unit, is acting inconsistent with Dura Art Store, Inc., 346 NLRB 149, n. 2 (2005) and unlawfully assisting the Union.

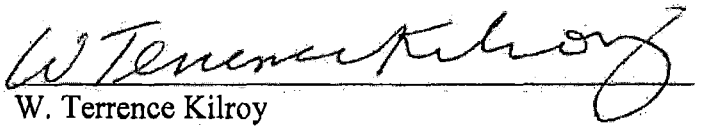
The Employer is currently deferring to the Board's policies in Levitz Furniture, 333 NLRB 717 (2001) and hoping a secret ballot election will decide whether, after ten (10) years of representation by the Union, the employees wish their representation to continue. Respondent prefers not to withdraw recognition, in deference to Levitz. However, the 8(a)(2) charge, along with impending end of the school year, place the Employer in a difficult position, best resolved by a prompt election. The unit will disappear for the summer after May 13, 2018. During the summer, a large part of the bargaining unit takes lucrative positions on fishing boats for the summer, while many of the remainder work at unknown locations in the "lower 48" Therefore, any direction needs to occur as soon as possible – no later than April 20, 2018.

IV. CONCLUSION

Respondent hopes the Regional Director will conclude its investigation as soon as possible and an election held, but in the event the investigation is not concluded by April 20,

making an election impossible until late August, the Employer requests Petitioner's Request for Review be granted.

Respectfully Submitted,



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COUNSEL FOR APPLE BUS COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Response to the Request for Review and the Union's Opposition was filed electronically with the Executive Secretary using the Board's e-filing system and copies were sent by e-mail to the following:

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W. Terrence Kilroy, Esq.

FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation proceeding in Case Case 19-RD-216636. It has filed an unfair labor practice charge in Case _____ and hereby requests that the petition be blocked by this charge.

(Name of Requesting Party)

(Case Number)

(Case Number)

John Marton
Signature

04/11/2018
Date

John Marton
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Agency Website: www.nlrb.gov
Telephone: (206)220-6300
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May 2, 2018

Amanda K. Freeman, Staff Attorney
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Rd, Suite 600
Springfield, VA 22151-2115

Re: Apple Bus Company
Case 19-RD-216636

Dear Ms. Freeman:

This is to notify you that the petition in the above-captioned case will be held in abeyance pending the investigation of the unfair labor practice charges in Cases 19-CA-218290 and 19-CA-218755. In Case 19-CA-218290, the International Brotherhood of Teamsters, Local 959 ("Union") alleges that the Employer has violated Sections 8(a)(1) and (5) of the Act by bargaining in bad faith with the Union by engaging in surface bargaining and failing to meet with the Union at reasonable times, including the frequency of meetings, actual bargaining time, the number of tentative agreements reached, the lengthy causes taken by the Employer, continued refusal to negotiate a Union security clause, and refusal to negotiate over certain articles and sections of the proposed collective-bargaining agreement. In Case 19-CA-218755, the Union alleges that the Employer has violated Sections 8(a)(1) and (2) of the Act by bargaining in bad faith with the Union by allowing and/or assisting in an effort to decertify the Union and by allowing certain employees to utilize Employer resources, including company time, to decertify the Union. The allegations set forth in Cases 19-CA-218290 and 19-CA-218755, if found to be meritorious, could interfere with employee free choice in an election, were one to be conducted (See Representation Casehandling Manual Section 11730.2). As such, the Region cannot process the petition further until final disposition of the unfair labor practice charges.

Right to Request Review: Pursuant to Section 102.71 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review shall be submitted in eight copies, unless filed electronically, with a copy filed with the regional director, and all copies must be served on all the other parties. The request must contain a complete statement setting forth facts and reasons upon which the request is based.

***Procedures for Filing Request for Review*:** A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time)** on May 15, 2018, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on May 16, 2018.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

The Board may grant special permission an extension of time within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the regional director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

R — K Hooks

RONALD K. HOOKS
Regional Director

cc: Office of the Executive Secretary (by e-mail)

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

APPLE BUS COMPANY
Employer

and

ELIZABETH J. CHASE
Petitioner Case 19-RD-216636

and

GENERAL TEAMSTERS LOCAL 959
Union

ORDER

The Petitioner's Request for Review of the Regional Director's determination to hold the petition in abeyance is denied as it raises no substantial issues warranting review.[1]

MARK GASTON PEARCE, MEMBER

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., May 9, 2018.

[1] Member Kaplan agrees with the decision to deny review here. He notes, however, that consistent with the Petitioner's suggestion, he would consider revisiting the Board's blocking charge policy in a future appropriate case. Member Emanuel agrees that the determination to hold the petition in abeyance in this case was permissible under the Board's current blocking-charge policy, but he believes that the policy should be reconsidered. Specifically, he believes that an employee's petition for an election should generally not be dismissed or held in abeyance based on contested and unproven allegations of unfair labor practices.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Apple Bus Company,
Employer, Case No. 19-RD-216636
and

General Teamsters Local 959,
Union,
and

Elizabeth Chase,
Petitioner.

PETITIONER'S SECOND REQUEST FOR REVIEW

Pursuant to National Labor Relations Board ("NLRB") Rules and Regulations §§ 102.67 and 102.71, Petitioner Elizabeth Chase ("Petitioner" or "Chase") submits this Request for Review of the Regional Director's May 2, 2018 election block (Ex. A) (the second one in this case) because, as noted by several Board members, it raises "compelling reasons for reconsideration of [a] . . . Board rule or policy." Rules & Regulations §§ 102.71(b)(1), (2). The current "blocking charge" rules effectively halt decertification elections based upon a union's unproven and contested allegations of an employer's unfair labor practice(s), which is contrary to the Act's purpose. Petitioner again urges the Board to re-evaluate its continued allowance of strategic, predictable, and dilatory "blocking charges" that allow General Teamsters Local 959 ("Union") to continue to prevent a decertification election in this case, which is the appropriate vehicle for doing so.

FACTS

Pursuant to a contract it held with the Kenai Peninsula Borough School District ("School District"), First Student, Inc. employed Chase and her fellow bargaining unit employees at

various times from 2008 until June 2017 to provide school bus transportation services in Alaska. Ex. B, Regional Director's Decision & Order at *1, *Apple Bus Co.*, Case No. 19-RD-203378 (Aug. 28, 2017), Request for Review denied, 2017 WL 6403493 (Dec. 14, 2017). First Student ceased to be the employer at midnight on June 30, 2017 when the School District's transportation contract with Apple Bus Company ("Employer") for the 2017–2018 school year became effective. *Id.* at *2. Employer and Union first met on February 24, 2017 to begin negotiations on a new collective bargaining agreement, and have continued to negotiate by telephone and in person since then. *Id.* at *2–*3.

Faced with the successor bar's February 24, 2018 expiration and its lack of majority support,[1] the Union strategically filed five unfair labor practice charges ("ULP")—"blocking charges"—against Employer, four in January, Case Nos. 19-CA-212764, 19-CA-212776, 19-CA-212798, 19-CA-212813 (all filed Jan. 5, 2018), and one eleven days before the bar's expiration, Case No. 19-CA-214770 (Feb. 13, 2018). The Union alleged in these charges the Employer refused to furnish information, unilaterally modified the contract, and refused to bargain. It is reasonable to presume most employees were unaware of the negotiation's status, and the Union has never proven that employees had such knowledge. The Employer vigorously is contesting all of these ULPs.

[1] On July 31, 2017, Chase filed her first decertification petition, in Case No. 19-RD-203378. Ex. B, Regional Director's Decision & Order at *3, *Apple Bus Co.*, Case No. 19-RD-203378 (Aug. 28, 2017), Request for Review denied, 2017 WL 6403493 (Dec. 14, 2017). At the Union's behest, the Regional Director dismissed as "premature" Petitioner's first petition on August 28, 2017 based on the "successor bar" doctrine adopted by a divided Board in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011). *Id.* at *3–*5. The Board denied review. *See* 2017 WL 6403493 (Dec. 14, 2017). The "successor bar" is not at issue here because, under the logic of the Regional Director's Decision and Order, the one year "successor bar" expired on February 24, 2018. Ex. B, at *4.

On February 26, 2018, Chase presented a majority decertification petition to the Employer asking it to withdraw recognition and cease bargaining with the Union pursuant to *Dura Art Stone, Inc.*, 346 NLRB 149 (2005). The Employer refused to do so, and Chase filed a ULP against it for its continuing bargaining with a minority union, which remains pending. Case No. 19-CA-216719 (Mar. 16, 2018).

Because the Employer refused to withdraw recognition of the minority union, Chase filed this case on March 15, 2018, her *second* decertification petition, supported by a majority "showing of interest." Without holding a hearing, making a threshold determination as to the five blocking charges' legitimacy, or ordering the Union to prove a "causal nexus" between the alleged Employer infractions and the employees' now longstanding desire to be rid of this Union, the Regional Director halted this second decertification election process at the Union's behest on March 20, 2018 based on these blocking charges. Ex. C, Order Postponing Hearing Indefinitely, *Apple Bus Co.*, Case No. 19-RD-216636 (Mar. 20, 2018). On March 28, 2018, Petitioner filed a Request for Review ("First Request for Review") of this decision, challenging the "blocking charge" rule.

Not willing to stop with just five contested charges, the Union recently filed two more ULPs alleging the Employer (1) bargained in bad faith by "surface bargaining," by failing to meet with the Union when it deemed it reasonable to meet, by the limited number of tentative agreements that were reached, and by its refusal to negotiate a Union security clause and to negotiate over various articles and sections of the Union's proposed collective-bargaining agreement; and (2) illegally allowed and or assisted the decertification and allowed employees to use the Employer's resources, including company time, to decertify it. Ex. D, Case Nos. 19-CA-212890 (Apr. 9, 2018), 19-CA-218755 (April 18, 2018). Similar to the first five blocking

charges, these additional ULPs are meritless, and the Employer vigorously is contesting them. Indeed, the new ULPs particularly are egregious as just one of the Union claims is that the Employer's failure to bargain over the inclusion of a forced dues clause in the collective bargaining agreement is an unfair labor practice—despite its proven lack of a majority support. Ex. D, Case No. 19-CA-212890. The Union also baldly claims Chase and other employees have utilized company time, with the support of the company, in order to decertify the Union when the opposite is true. *Id.*, Case No. 19-CA-218755. Indeed, the Region never even bothered to solicit an affidavit from Chase to determine if the Union's blatantly false allegations of Employer taint have any factual basis.

While the First Request for Review was pending, the Regional Director again held the second decertification election in abeyance on May 2, 2018, based on these two new unproven and contested ULPs. Ex. A. The Regional Director did so again without holding a hearing, making a threshold determination as to the blocking charges' legitimacy, or ordering the Union to prove a "causal nexus" between the alleged Employer infractions and the employees' decertification desire. Then, on May 9, 2018, the Board denied Petitioner's First Request for Review, with two members' noting, however, that they favor revisiting or reconsidering the Board's blocking charge policy. Ex. E, Order, *Apple Bus Co.*, Case No. 19-RE-216636, 2017 WL 6403493, *1 n.1 (May 9, 2018).[2]

[2] Member Emanuel stated "an employee's petition for an election should generally not be dismissed or held in abeyance based on contested and unproven allegations of unfair labor practices," and Member Kaplan stated he would reconsider the issue in "a future appropriate case." Ex. E, Order, *Apple Bus Co.*, No. 19-RE-216636, 2017 WL 6403493, *1 n.1 (May 9, 2018).

ARGUMENT

The Board exists to conduct elections and thereby vindicate employees' rights under the Act to choose or reject union representation. It does not exist to suspend elections arbitrarily at the unilateral behest of a union that fears loss of its bargaining unit based on that union's unproven and contested unfair labor practice allegations. *C.f. General Shoe Corp.*, 77 NLRB 124, 126 (1948) (holding the Board should exercise its power to set aside an election "sparingly" because it cannot "police the details surrounding every election" and the secrecy in Board elections empowers employees to express their true convictions). The Board's "blocking charge" rules deny Petitioner and the employees their fundamental National Labor Relations Act ("NLRA" or "Act") Sections 7 and 9 rights and allow the Union to "game the system" and strategically delay the *decertification* election—in contrast to the Board's recent policy of rushing all *certification* petitions to an election while prohibiting "blocks" under any circumstances. *See Representation-Case Procedures*, 79 Fed. Reg. 74308, 74430–74460 (Dec. 15, 2014).

Even if the Union's ULPs had merit, which they do not, there is no causal nexus between the Union's contested allegations and the current decertification petition. As demonstrated by the first decertification petition, this Union has always faced significant (if not majority) employee opposition. Ex. B, Regional Director's Decision & Order at *1. Yet, the Regional Director, for a second time, mechanically halted the election based on the blocking charge rules. Ex. A. Despite her valid election petition, Petitioner's and other employees' exercise of their Section 7 and 9 rights have been, and continue to be, postponed and essentially nullified by the Union's unfounded and unproven allegations.

The Board should terminate its double-standard between certification and decertification elections, order Petitioner's election to proceed, and follow former Chairman Miscimarra's urging to implement a wholesale revision of the "blocking charge" rules. *Cablevision Systems Corp.*, Case 29-RD-138839, *1 n.1 (June 30, 2016) (Order Denying Review); *see also Valley Hosp. Med. Ctr., Inc. & SEIU Local 1107*, 28-RD-192131, 2017 WL 2963204 (Order Denying Review, July 6, 2017); *Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 426 (4th Cir. 2001) (noting Section 7 "guards with equal jealousy employees' selection of the union of their choice and their decision not to be represented at all"). In the alternative, the Board should require the Region to conduct a *Saint-Gobain* hearing as a precondition to blocking Petitioner's decertification election. *See Saint-Gobain Abrasives, Inc.*, 342 NLRB 434 (2004).

I. The Board's "blocking charge" policy is inconsistent with the Act's purpose and should be overruled.

In this case, the Employer took no actions that interfered with employee free choice. However, even if, *arguendo*, the Employer actually committed some of the violations alleged in the Union's new ULPs, the employees' statutory right to petition for a decertification election should not be trampled due to the Employer's fault.

A. The Act exists to protect employees' rights.

NLRA Section 7 grants employees a statutory right to refrain from forming, joining, or assisting a labor organization. 29 U.S.C. § 157. Concomitant with that right to refrain, NLRA Section 9(c)(1)(A)(ii) grants employees a statutory right to petition for a decertification election subject only to the express limitation preventing such an election from being held within twelve months of a previous election. 29 U.S.C. §§ 159(c)(1)(a) & (c)(3). Employees' Section 7 right of free choice is the NLRA's paramount concern, and such rights should not be denied based on arbitrary rules, "bars," or "blocks" created by the Board. *Pattern Makers' League v. NLRB*, 473

U.S. 95, 104 (1985); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992) (noting Section 7 confers rights only on employees, not unions and their organizers); *see also Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) (noting employee free choice is the "core principle of the Act" (quotation marks and citation omitted)).

The preferred forum for employees to exercise their free choice rights, be it in a certification or decertification election, is in an NLRB conducted secret-ballot election. *See Levitz Furniture Co. of the Pac., Inc.*, 333 NLRB 717, 725–26 (2001). Such elections enhance industrial peace by ensuring the employees actually support the workplace representative empowered exclusively to speak for them. Yet, the "blocking charge" policy, which has no statutory foundation, sacrifices the employees' free choice rights by forbidding only a decertification election based on an unpopular incumbent union's whims and strategic considerations as it clings to power.

B. The "blocking charge" policy infringes on employees' rights

The Board's "blocking charge" practice is not governed by statute. Rather, its creation and application lies within the Board's discretion to effectuate the Act's policies. *American Metal Prods. Co.*, 139 NLRB 601, 604–05 (1962); *see also* NLRB Casehandling Manual (Part Two) Representation Sec. 11730 et seq. (setting forth in detail the "blocking charge" procedures). Yet, contrary to the Board's purpose of effectuating the Act, the Board's "blocking charge" policy circumvents Petitioner's and other employees' statutory rights.

The Board's "blocking charge" policy operates under a system of "presumptions" that prevent employees from exercising their Section 7 and 9(c)(1)(A)(ii) statutory rights to hold a decertification election almost every time a union simply files a ULP against an employer, regardless of that ULP's veracity. When a blocking charge is filed, the Regional Director invariably holds the decertification proceeding in abeyance, which is precisely what happened in

this case. Yet, no matter how offensive a ULP may be, the election should be held once there is a showing of 30% interest seeking an election and the ballots counted, with challenges or objections, if any, sorted out thereafter, just as with certification elections.

Here, the Regional Director's immediate application of the "blocking charge" policy ignored, and continues to ignore, Chase's and her fellow bargaining unit members' longstanding wish to exercise their right to be free from the Union's representation. In automatically blocking this election, the Regional Director wrongly treats Petitioner and her fellow employees like children who cannot make up their own minds. Even assuming, *arguendo*, the Employer actually committed certain technical violations as alleged in the new ULPs, "[t]he wrongs of the parent should not be visited on the children, and the violations of [the employer] should not be visited on these employees." *Overnite Transp. Co.*, 333 NLRB 1392, 1398 (2001) (Member Hurtgen, dissenting); *see also Cablevision Systems Corp.*, Case 29-RD-138839 (June 30, 2016) (Order Denying Review) (Member Miscimarra, dissenting).

The Board's "blocking charge" policy often denies decertification elections even where, as here, the employees may not be aware of the alleged employer misconduct, the employees are the very ones accused of the wrongdoing and can disprove it, or the employees' longstanding disaffection from the union springs from wholly independent sources that predate the alleged infractions. Use of "presumptions" to halt decertification elections serves only to entrench unpopular incumbent unions, thereby forcing an unwanted representative on employees. Judge Sentelle's concurrence in *Lee Lumber* specifically highlights the inequitable nature of the Board's policies. 117 F.3d at 1463–64.

C. The "blocking charge" policy should be overhauled.

Discretionary Board policies, such as the Board's blocking charge policy, should be reevaluated when industrial conditions warrant. *See, e.g.*, *IBM Corp.*, 341 NLRB 1288, 1291 (2004) (holding the Board has a duty to adapt the Act to "changing patterns of industrial life" and the special function of applying the Act's general provisions to the "complexities of industrial life") (citation omitted)). Given that a prior Board majority decided to rush all certification petitions to fast elections and hold objections and challenges until afterwards, 79 Fed. Reg. 74308 (Dec. 15, 2014), the current Board should adopt a neutral and balanced policy that will treat decertifications the same way, and further protect employees' rights.

The time has come to apply the election rules fairly, across the board, to both certification and decertification elections. This especially is true since the Board's continued practice of delaying and denying only decertification elections based upon blocking charges has faced severe judicial criticism. In *NLRB v. Minute Maid Corp.*, the Fifth Circuit stated:

> [T]he Board is [not] relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold otherwise would put the union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented.

283 F.2d 705, 710 (5th Cir. 1960); *see also Surratt v. NLRB*, 463 F.2d 378 (5th Cir. 1972) (rejecting application of the blocking charge policy); *Templeton v. Dixie Printing Co.*, 444 F.2d 1064 (5th Cir. 1971) (same); *NLRB v. Gebhardt-Vogel Tanning Co.*, 389 F.2d 71, 75 (7th Cir. 1968) (quoting *Minute Maid Corp.*, 283 F.2d at 710); *T-Mobile USA Inc. v. NLRB*, 717 F. App'x 1, 4 (D.C. Cir. 2018) (Sentelle, J., dissenting) (noting the Board's blocking charge policy causes "unfair prejudice").

Here, the Board should take administrative notice of its own statistics, which show approximately 30% of decertification petitions are "blocked," whereas certification elections are

never blocked for any reason. *See* NLRB, *Annual Review of Revised R-Case Rules*, https://www.nlrb.gov/sites/default/files/attachments/news-story/node-4680/R-Case%20Annual%20Review.pdf. Contrary to decertification peitions, the Board conducts all certification elections first, counts the ballots, and settles any objections or challenges afterwards. If the Board can rush certification petitions to quick elections by holding all objections and challenges until afterwards, it surely can do the same for decertification petitions. It is time the Board overrules its discriminatory "blocking charge" rules, which apply only to employees seeking to exercise their right to refrain from supporting a union. The Board must create a system whereby employees seeking decertification elections are afforded the same rights as employees seeking a certification election.

In short, the Board should order Region 19 to proceed to an immediate election without further delay. Petitioners and her colleagues are not sheep, but responsible, free-thinking individuals who should be able to make their own free choice about unionization. The employees' paramount Section 7 and 9 rights are at stake, and their rights should not be so cavalierly discarded because their Employer is alleged to have committed mistakes under labor laws. Petitioner urges the Board to overrule or overhaul its "blocking charge" policies to protect the NLRA's true touchstone—*employees*' paramount Section 7 free choice rights. *Int'l Ladies Garment Workers v. NLRB*, 366 U.S. 731, 737 (1961) (holding "there could be no clearer abridgment of § 7 of the Act" than for a union and employer to enter into a collective bargaining relationship when the union lacks a majority of employees support).

D. The current case is the appropriate vehicle demonstrating the "blocking charge" policy's impingement on employees' rights.

The Regional Director's action of twice denying Petitioner and employees the opportunity to exercise their NLRA Section 9(c)(1)(A)(ii) right to petition for a decertification

illustrates the current "blocking charge" policy's absurdity. The Employer perpetrated no "wrongs" and the Petitioner and her colleagues are not "victims." Not only are the Union's allegations in the new ULPs minor and baseless, they also accuse Petitioner of wrong doing and were filed to further delay and postpone the decertification election rather than to challenge actual wrongs to employees, making application of the "blocking charge" policy even more egregious. Particularly appalling is the Union's claim that it is entitled to a contract with a compulsory dues clause, even though a majority of employees signed decertification petitions to oust it. Ex. D, Case No. 19-CA-218755. Despite majority support for decertification, the Region indefinitely postponed an election proceeding based upon mere speculation that some connection might exist between the petition and the alleged ULP's. Ex. A.

Application of the *Master Slack Corporation* factors compels a determination that the two recent ULPs at issue should not block the election. 271 NLRB 78 (1984). *Master Slack* requires an analysis of several factors including: "[1] the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; [2] any possible tendency to cause employee disaffection from the union; and [3] the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union." *Id.* at 84 (citing *Olson Bodies, Inc.*, 206 NLRB 779 (1973)).

Here, the Union's two new ULPs do not allege serious unilateral changes that are essential terms and conditions of employment. The violation types that cause dissatisfaction "are those involving coercive conduct such as discharge, withholding benefits, and threats to shutdown the company operation." *Tenneco Auto, Inc. v. NLRB*, 716 F.3d 640, 650 (D.C. Cir. 2013) (finding employer's refusal to provide union addresses of replacement employees, requirement that employees obtain company permission before posting materials, and discipline

of union advocate did not taint petition); *see also Goya Foods*, 347 NLRB 1118, 1122 (2006) (finding hallmark violations are those "issues that lead employees to seek union representation").

The Union's new ULPs blocking the election contain a variety of allegations and contested innuendoes, many of them self-serving. The first charge concerns allegations that the Employer is bargaining in bad faith through surface bargaining, and its lack of commitment to bargaining is evidenced by, among other things, the inability to reach an agreement on certain Union proposed terms, the refusal of the Employer to negotiate a compulsory union dues clause (despite the Union's lack of majority support), the Employer's unavailability to meet at certain Union-selected times, and a generalized failure of the Employer to bargain (despite many bargaining sessions having been held for more than a year with many tentative agreements reached). *See* Ex. D, Case No. 19-CA-218290. These allegations, however, are nowhere close to a "hallmark violation" such as "threats to shutdown the company operation." *Tenneco*, 716 F.3d at 650. Nor is the Employer's conduct the type that encourages employees "to seek union representation." *Goya Foods*, 347 NLRB at 1122. There is no evidence that Chase and other employees even knew of the underlying events occurring at the bargaining table.

The second charge alleges the Employer violated the Act by "allowing" the decertification election, by "assisting" Petitioner and employees in the decertification effort, and by permitting Petitioner and other employees the use of company resources, such as paid time. First, the Union's argument that the Employer illegally is "allowing" the decertification election is ludicrous. Employers must "allow" elections and not interfere with them as the Act itself allows them and requires them to be free from certain employer interference.[3] 29 U.S.C. §§ 157,

[3] Even if Employer did offer assistance in the form of discussing continuing the same benefits or the disadvantages of having a union, such is permitted. *See In Re Langdale Forest Prod. Co.*, 335 NLRB 602 (2001) ("[I]t is well settled that, absent threats or promise of benefit, an employer

158(a)(1), 158(c); *see Voca Corp.*, 329 NLRB 591, 593 (1999) (holding the employer violated Section 29 U.S.C. § 158(a)(1) by interfering with the decertification election). Second, there is no evidence that assistance was provided with the first decertification filed on July 31, 2017, nor did the Union claim improper assistance with that decertification.[4] Simply stated, there exists no evidence to support this charge.

Lastly, no Employer support of decertification efforts are taking place, nor need to take place, because the Regional Director effectively halted the second decertification five days after it was filed. Ex. C. There is nothing occurring that needs support at this time. Only after the Employer pointed out the lack of such a charge against it in its April 9, 2018 response to Petitioner's First Request for Review did the Union file one. *See* Ex. D, Case No. 19-CA-218755 (filed April 18, 2018). This sequence alone leads to the conclusion that the ULP was filed strategically to further block the election. Here, employees had been disenchanted with the Union well before they filed this second decertification effort. Any way the Union's charges are evaluated, they lack merit, and, even if they do not, they are insufficient to block the election and nullify employees' rights under NLRA Sections 7 and 9.

Finally, it should be noted that this bargaining unit largely consists of school bus drivers, most of who do not work for the Employer during the summer months. In addition to allowing the Union to game the system and block elections at will for strategic reasons, the Board's blocking charge rules are being abused to delay the election and drag it into the summer months, when most employees will be scattered to the winds and not present to cast a vote. This strategic

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is entitled to explain the advantages and disadvantages of collective bargaining to its employees, in an effort to convince them that they would be better off without a union." (citing *Custom Window Extrusions*, 314 NLRB 850 (1994); *Fern Terrace Lodge*, 297 NLRB 8 (1989))).

[4] The Union withdrew its August 17, 2017 ULP against Employer claiming such assistance, which the Employer pointed out in its response to Petitioner's First Request for Review.

delay may be to the Union's advantage, but it certainly is not an advantage to the Petitioner and other employees whose rights are being trampled.

II. Alternatively, the Board should require the Union to meet its burden of proof, in an adversarial hearing, that there exists a "causal nexus" between the alleged Employer infractions and the employees' desire to decertify.

The Regional Director deprived Petitioner and other employees of their Section 7 rights by blocking their decertification election without evidence that the alleged ULPs influenced the employees to petition for the Union's removal. The Region's proper course of action is to hold the election, count the ballots, and then schedule a hearing *after* the election, if and when the Union files objections.

In the alternative, the Regional Director should, prior to blocking the election, require the Union to prove the existence of a "causal nexus" at a *Saint-Gobain* evidentiary hearing. In order for an unfair labor practice to taint a petition or block an election, there must be a "causal nexus" between the Employer's actions and the employees' dissatisfaction with the Union. *Master Slack Corp.*, 271 NLRB 78 (1984). But here, there has been no such showing and the Regional Director did not compel the Union to make such a showing. Petitioner has not even been asked by the Region for a statement whereby she can deny the most recent false allegations. Petitioner is left with only speculation about the Union's claimed causal connection between the employees' motivations for wanting to oust the Union and its two new ULPs.

Thus, at the very least, the Board should require the Regional Director to hold a *Saint-Gobain* hearing as a precondition to blocking an election based on the Union's ULPs. *Saint Gobain Abrasives, Inc.*, 342 NLRB at 434. At such an adversarial hearing the Union will be required to meet its burden of proof that a "causal nexus" exists. *See, e.g.*, *Roosevelt Mem'l Park, Inc.*, 187 NLRB 517, 517–18 (1970) (holding a party asserting a bar's existence bears the burden

of proof). As the Board noted in *Saint-Gobain*, "it is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights." *Id.* But, due to the lack of a *Saint-Gobain* hearing, all this record contains is speculation.

For a second time, the Regional Director erred by reflexively blocking this election and by failing to require the Union to prove, in an adversarial hearing, the "causal nexus" between the allegations in its unfair labor practice charges and the employees' continued disaffection. Petitioner's and her fellow employees' Section 7 and 9 rights have been diminished, if not destroyed, by this process.

CONCLUSION

The Board should grant Petitioner's Request for Review and order the Regional Director to process this decertification petition and count the ballots. In addition, the Board should overrule or substantially overhaul its "blocking charge" policy.

Respectfully submitted,

/s/ Amanda K. Freeman

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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2018, a true and correct copy of the foregoing Request for Review was filed with the Executive Secretary using the NLRB e-filing system, and copies were sent to the following parties via e-mail, as noted:

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPLE BUS COMPANY	)	
	)	
Employer	)	
	)	
and	)	Case No. 19-RD-216636
	)	
GENERAL TEAMSTERS LOCAL 959	)	
	)	
Union	)	
	)	
and	)	
	)	
ELIZABETH CHASE	)	
	)	
Petitioner	)	

UNION'S OPPOSITION TO PETITIONER'S SECOND REQUEST FOR REVIEW

I. INTRODUCTION

On July 31, 2017, Elizabeth Chase (Chase), filed a decertification petition (Case No. 19-RD-203378).

On August 28, 2017, Chase's decertification petition was dismissed by the Regional Director on the basis of *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), and the successor bar doctrine.

On September 25, 2017, Chase filed a Request for Review of the Regional Director's Decision and Order. That same day, Apple Bus filed a Request for Review of the Regional Director's Decision and Order.

The National Labor Relations Board (Board), by Order dated December 14, 2017, denied the two Requests for Review because they raised no substantial issues warranting review.

On March 15, 2018, Chase filed another decertification petition (Case No. 19-RD-216636).

On March 20, 2018, the Regional Director issued an Order Postponing Hearing Indefinitely due to five blocking unfair labor practice charges filed by the Union (Exhibit C to Petitioner's Second Request for Review).

On March 28, 2018, Chase filed Petitioner's Request for Review of the Regional Director's March 20, 2018 Order Postponing Hearing Indefinitely.

On or about April 9, 2018, Apple Bus filed Employer's Response to the Petitioner's Request for Review and Union's Brief in Opposition.

On May 2, 2018, the Regional Director notified Chase that the petition would be held in abeyance pending the investigation of unfair labor practice charges in Cases 19-CA-218290 and 19-CA-218755 (Exhibit A to Petitioner's Second Request for Review).

By Order dated May 9, 2018, this Board denied Petitioner's Request for Review of the Regional Director's determination to hold the petition in abeyance as it raised no substantial issues warranting review (Exhibit E to Petitioner's Second Request for Review).

On May 15, 2018, Chase filed Petitioner's Second Request for Review. Chase cited Board Rules and Regulations 102.67 and 102.71 and alleged compelling reasons for reconsideration of a Board rule or policy (Second Request at 1).

The Union files this Opposition to Petitioner's Second Request for Review. The Union incorporates by reference the Decision and Order (DO) of the Regional Director in Chase's first decertification petition, Case 19-RD-203378 (see DO, Exhibit B to Second Request). The Union urges that there are no compelling reasons to grant Chase's Second Request for Review. Chase's second decertification petition was not dismissed or denied by the Regional Director. It was merely postponed or held in abeyance pending investigation and decisions on the Union's unfair labor practice charges.

II. FACTS

From 2008-2017, the Union represented First Student, Inc. employees performing services for the Kenai Peninsula Borough School District. DO at 1.

After being awarded a bid, Apple Bus performed the services starting July 1, 2017. The Union and Apple Bus met on February 24, 2017 to discuss a probable collective bargaining relationship. For several months, the Union asked Apple Bus to agree to be bound by the First Student collective bargaining agreement (CBA) but Apple Bus refused. The Union rejected an agreement presented by Apple Bus. DO at 2.

On June 8, 2017, Apple Bus mailed job offer letters to 105 of the 126 former First Student employees. DO at 2. By August 11, 2017, 98 former First Student employees and 4 persons who had not worked for First Student accepted positions with Apple Bus. Apple Bus expected to employ 115 Bargaining Unit employees by August 14, 2017. DO at 3.

On July 18 and 19, 2017, the Union and Apple Bus first met to bargain for a new CBA. Tentative agreement was reached on Declaration of Purpose, Recognition, Maintenance of Standards, and Union Stewards articles. DO at 2-3 (emphasis added). The Union and Apple Bus met again on August 9, 10, and 11, 2017. DO at 3. Further negotiations have been held since then. The Union asked to schedule more days for negotiations but Apple Bus usually only agreed to meet two days a month, refused to schedule dates past the next month, and canceled some negotiation sessions.

Apple Bus sent out job offer letters in June 2017, hired a majority of Bargaining Unit employees in July 2017 at the earliest, and did not have a majority of Bargaining Unit employees hired and on the job until August 14, 2017. DO at 2-3.

The Regional Director noted, "A 'reasonable period of bargaining' for the purposes of the successor bar doctrine ... is 'measured from the date of the first bargaining session after

recognition.'" DO at 3 (citations omitted). Based on the foregoing facts, and notwithstanding the Regional Director's DO, the Union urges that the successor bar should be measured from no earlier than the date of the first substantive bargaining meeting of the Union and Apple Bus on July 18, 2017. The successor bar should last until at least July 18, 2018. The Union respectfully urges that the successor bar is still in effect in this case.

Apple Bus never questioned the Union's majority status and agreed to a Recognition article. DO at 3. Chase argues that most employees were unaware of the status of negotiations (Second Request at 2, 12). However, four Apple Bus employees have been on the Union negotiating team and directly involved when the Union and Apple Bus have negotiated. The Union has kept employees informed through meetings, events, gatherings, publications, and social media.

III. ARGUMENT IN OPPOSITION TO REVIEW

Webster's II New Riverside University Dictionary defines "compel" or "compelling" as, "1. To force, drive, or constrain, 2. To make necessary." Chase may wish to see the law and blocking charge policy changed but there are no compelling reasons to change the policy.

A. The successor bar provides stability for a bargaining relationship

UGL restored the "successor bar" doctrine. Under the doctrine, when a successor employer acts in accordance with its legal obligation to recognize an incumbent representative of its employees, that representative is entitled to represent the employees in collective bargaining with their new employer for a reasonable period of time, without challenge to its representative status. *UGL* at 801, citing *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999).

Analogous bar doctrines are well established in labor law, based on the principle that "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed." The bar promotes a primary goal of the National Labor Relations Act (NLRA) by stabilizing labor-management relationships

and promoting collective bargaining, without interfering with the freedom of employees to periodically select a new representative or reject representation. *UGL* at 801.

The *UGL* Board observed that the transition from one employer to another threatens to seriously destabilize collective bargaining, even when the new employer must recognize the incumbent union. The new employer is free to choose (on any non-discriminatory basis) which of the predecessor's employees it will keep and which will go. It is free to reject an existing CBA. It will often be free to establish unilaterally all initial terms and conditions of employment. In a setting where everything employees have achieved through collective bargaining may be swept aside, the union must deal with a new employer and, at the same time, persuade employees that it can still effectively represent them. *UGL* at 805.

On the effect of a successor situation on employees, *UGL* noted, "After being hired by a new company ..., employees initially will be concerned primarily with maintaining their new jobs. *In fact, they might be inclined to shun support for their former union, especially if they believe that such support will jeopardize their jobs with the successor*.... Without the presumptions of majority support ..., an employer could use a successor enterprise as a way of getting rid of a labor contract and of exploiting the employees' hesitant attitude towards the union to eliminate its continuing presence." *UGL* at 803 (citation omitted).

B. The successor bar protects employee free choice

The *UGL* Board noted that the *St. Elizabeth Manor* Board rejected the view that the "successor bar" gave too little weight to employee freedom of choice, which it recognized as a "bedrock principle of the statute." The crucial aspect of the balance struck by the successor bar was that the bar "extends for a 'reasonable period,' not in perpetuity." *UGL* at 804, 808. *UGL* defined the reasonable period of bargaining mandated by the successor bar. Where the successor employer recognizes the union, but unilaterally announces and establishes initial terms and

conditions of employment before proceeding to bargain, the "reasonable period of bargaining" will be a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the union and the employer. The Board will apply the *Lee Lumber* analysis to determine whether the period has elapsed. Where the parties are bargaining for an initial contract, because the destabilizing factors associated with successorship are at their height, a longer insulated period is appropriate. *UGL* at 808-809.

C. The blocking charge policy is consistent with the purpose of the NLRA, aims to protect employee rights, and should not be changed; the current case shows no reason to change the blocking charge policy; no adversarial hearing is needed

Chase alleges that the Regional Director did not hold a hearing, there was no proof of a "causal nexus," and the blocking charge rules halt decertification elections simply based on a union filing an unfair labor practice charge. Chase claims that the unfair labor practice charges in this case are without merit (Second Request at 3-4, 11, 13). Chase argues the blocking charge rules allow unions to delay all decertification elections (Second Request at 1). Chase cynically and inaccurately portrays the Regional Director's decision and Order as at the Union's behest (Second Request at 3, 5), mechanical (Second Request at 5), invariable (Second Request at 7), automatic (Second Request at 8), based on mere speculation (Second Request at 11, 15), and reflexive (Second Request at 15) in response to the Union filing blocking charges. Chase fails to acknowledge the requirements and guidance of the Board's Caschandling Manual Part Two Representation Proceedings:

11730 Blocking Charge Policy – Generally

The filing of a charge does not automatically cause a petition to he held in abeyance. When a party to a representation proceeding files an unfair labor practice charge and desires to block the processing of the petition, the party must file a request that the petition be blocked and must simultaneously file a written offer of proof in support of the charge that contains the names of the witnesses and a summary of each witness's anticipated testimony ... The charging party requesting to block the processing of the petition must promptly make its witnesses available. If the regional

director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employees free choice in an election or would be inherently inconsistent with the petition itself, ... the regional director shall continue to process the petition and conduct the election where appropriate ... [T]he blocking charge policy is premised solely on the Agency's intention to protect the free choice of employees in the election process.

As stated in the last sentence, the blocking charge policy is intended to protect the free choice of employees in the election process. The policy began in 1937 "as part of the Board's function of determining whether an election will effectuate the policies of the Act." *American Metal Products*, 139 NLRB 601 (1962); *U.S. Coal & Coke*, 3 NLRB 398 (1937). The Board's principal role in elections is to ensure that employees are able to express their choice free of unlawful coercion. The policy aims to ensure that interference with employee choice is remedied before an election. The policy gives a regional director discretion to not process a petition in the face of a pending unfair labor practice charge if the regional director believes that employee free choice is likely to be impaired. Here, it must be assumed that the Regional Director properly followed the above requirements and guidance and sought to protect employee free choice in the election process. The Regional Director's May 2, 2018 notification (Exhibit A to Second Request) stated, "... The allegations set forth in Cases 19-CA-218290 and 19-CA-218755, if found to be meritorious, could interfere with employee free choice in an election, were one to be conducted (See Representation Casehandling Manual Section 11730.2). As such, the Region cannot process the petition further until final disposition of the unfair labor practice charges."

The unfair labor practice charges, with offers of proof for each, filed by the Union raise serious concerns about unlawful Apple Bus coercion and interference with employee choice including failure to bargain in good faith by:

1. Failing to provide information the Union requested during contract negotiations - information necessary for the Union to bargain for a new CBA. Charge 19-CA-212764.

2. Unilaterally changing employees' wages during CBA negotiations. Charge 19-CA-212798.

3. Unilaterally changing terms and working conditions for employees during CBA negotiations. Charge 19-CA-212776.

4. Failing to agree to schedule negotiations meetings and meet with the Union at reasonable dates/times for the purpose of bargaining a CBA. Charge 19-CA-212813.

5. Failing to provide prior notice to the Union re changes it was going to make during the course of CBA negotiations for holiday pay, standby pay, park out benefits/pay, and longevity; during the course of bargaining the Company unilaterally provided gifts to certain employees in the form of holiday pay, standby pay, and park out pay/benefits without prior knowledge of the Union; unilaterally ceasing holiday pay after it had established a practice of paid holidays. Charge 19-CA-214770.

6. Surface bargaining; lack of commitment to the bargaining process as evidenced by failure to meet with the Union at reasonable times, including the frequency of meetings, actual bargaining time, the number of tentative agreements reached, the lengthy caucuses taken by the Company for relatively non-complex issues, continued refusal to negotiate a Union security clause, and refusal to negotiate over certain articles/sections of the proposed CBA, among other things. Charge 19-CA-218290.

7. Allowing and/or assisting certain employees to pursue decertifying the Union; allowing certain employees to utilize Company resources, including decertification activity on Company time, among other things. Charge 19-CA-218755.

Chase's reliance (Second Request at 6, 14-15) on *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004), is misguided. In *Saint Gobain* the Regional Director dismissed a decertification petition without a hearing. The Board held that a hearing was a prerequisite to denying the petition. At 434. By contrast, here the Regional Director did not deny or dismiss Chase's petition. A *Saint Gobain* hearing does not have to be separate from the unfair labor practice hearing. A regional director may use the record in an unfair labor practice hearing in making a *Saint Gobain* determination. See, e.g., *NTN-Bower Corp.*, 10 RD 1504 (Order, May 20, 2011). *Saint Gobain* did not address situations, like with Apple Bus, where the employer has encouraged decertification and surface bargained.

Chase desperately attempts to rely on dissenting Board and legal views, Orders, and cases before the 2014 rulemaking (Second Request at 6, 9). But Chase must admit that only 30% of decertification petitions are blocked (Second Request at 9-10). *Valley Hospital Medical Center, Inc. and SEIU Local 1107*, Case 28-RD-192131 (Order July 6, 2017), denying Requests for Review of the Regional Director's decision to hold the decertification petition in abeyance pending the investigations of unfair labor practice charges, noted:

> Contrary to our colleague's criticism of the Board's longstanding blocking charge policy, we find it continues to serve a valuable function. As explained in our 2014 rulemaking, the blocking charge policy is critical to safeguarding employees' exercise of free choice. See Representation-Case Procedures, 79 Fed. Reg. 74308, at 74418-74420, 74428-74429 (Dec. 15, 2014). Indeed, "[i]t advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference." Id. at 74429. Nevertheless, in response to commentary and our colleague's concerns, the Election Rule modified the policy to limit opportunities for unnecessary delay and abuse. Id. at 74419-20, 74490.
>
> We also observe that in upholding the Election Rule, the U.S. Court of Appeals for the Fifth Circuit recently rejected an argument similar to our colleague's ... and found that the Board did not act arbitrarily by implementing various regulatory changes resulting in more expeditious processing of representation petitions without eliminating the blocking charge policy altogether. See *Associated Builders and Contractors of Texas, Inc. v. NLRB*, 826 F.3d 215, 228 (5th Cir. 2016). In doing so, the court cited with approval its prior precedent in *Bishop v. NLRB*, 502 F.2d 1024 (5th Cir. 1974), wherein the court set forth the following explanation for why the blocking charge policy is justified:
>
> > If the employer has in fact committed unfair labor practices and has thereby succeeded in undermining union sentiment, it would surely controvert the spirit of the Act to allow the employer to profit by his own wrongdoing. In the absence of the 'blocking charge' rule, many of the NLRB's sanctions against employers who are guilty of misconduct would lose all meaning....
> >
> > Nor is the situation necessarily different where the decertification petition is submitted by employees instead of the employer or a rival union. Where a majority of the employees in a unit genuinely desire to rid themselves of the certified union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.
>
> Id. At 1029 (quoting *NLRB v. Big Three Industries, Inc.*, 497 F.2d 43, 51-52 (5th Cir. 1974)).
>
> Chairman Miscimarra favors a reconsideration of the Board's blocking charge doctrine for reasons expressed in his and former Member Johnson's dissenting views to the Board's Election Rule, 79 Fed. Reg. 74308 at 74430-74460 (Dec. 15, 2014), but he

> acknowledges that the Board has declined to materially change its blocking charge doctrine....

The Union has negotiated with Apple Bus to try to reach agreement on a first CBA. The Union has been negotiating virtually everything and the issues are complex. Apple Bus, in an effort to "run out the successor bar clock" and undermine union sentiment, has engaged in unfair labor practices, which caused the Union to file the unfair labor practice charges. Apple Bus has hindered the parties' reaching a CBA in the limited time allotted for the Union to do so. Due to the unfair labor practices of Apple Bus, the Union needs more time to reach agreement on the terms of a first CBA. Chase's second decertification petition would deny the Union that additional time. The blocking charges and Regional Director's actions were appropriate.

Chase alleges that the unfair labor practice charges and blocking charges are without merit (Second Request at 3-4, 5). Chase tries to downplay the egregious unfair labor practices of Apple Bus as like an employer offering assistance by discussing continuing the same benefits or the disadvantages of having a union or discussing the advantages and disadvantages of collective bargaining (Second Request at 12, fn. 3.) The Union filed each blocking charge in good faith based on the merits. The Board has traditionally had considerable discretion to adopt practices to effectuate the policies of the NLRA. *American Metal Products*, 139 NLRB 601 (1962). Apple Bus requested review of the Regional Director's dismissal of Chase's first decertification petition. Apple Bus will likely join Chase in requesting review of the Regional Director's later actions.

Employers are not entitled to an election caused by their unlawful conduct. *Frank Bros. v. NLRB*, 321 US 702 (1944) (election not appropriate remedy where union lost majority after employer's wrongful refusal to bargain); *Brooks v. NLRB*, 348 US 96 (1954) (employer's refusal to bargain may not be rewarded with the decertification it seeks). The blocking charge policy has been approved by Federal Courts. *Associated Builders and Contractors of Texas, Inc.*, 826 F3d

215, 228 (5th Cir. 2016); *Bishop v. NLRB,* 502 F2d 1024 (5th Cir. 1974); *NLRB v. Big Three Industries, Inc.,* 497 F2d 43, 51-52 (5th Cir. 1974).

The Union should not be forced to proceed to an election when there are serious and substantial concerns that unfair labor practices by Apple Bus have undermined employee free choice. A tainted election may cause additional damage that cannot be remedied by rerunning an election. The blocking charge policy saves the Board from wasting resources on a "contingent" election and forces remediation of the unfair labor practices before an election. No policy of the NLRA is advanced by conducting an election unless employees can vote without unlawful interference and coercion. The blocking charge policy protects against frivolous charges, as indicated by statistics showing a large decline in dismissal of decertification petitions since the new rule went into effect. "Unfair labor practice charges that warrant blocking an election involve conduct that is inconsistent with a free and fair election ... there is no inconsistency between the final rule's preservation of that basic policy and the other changes made by the final rule." 79 Fed. Reg. 74429 (December 14, 2014).

Chase mistakenly tries to attribute to the Regional Director her claim that the Union has always faced significant employee opposition (Second Request at 5) and asserts that her second decertification petition was supported by a majority showing of interest. The Union has no knowledge that it has allegedly lost the support of a majority of Bargaining Unit employees. The Union does not know the details of Chase's alleged petition, how or when signatures were gathered, how many signatures are not valid, and other factors. Apple Bus recognized the Union as the representative of the employees. It has not been proved that the Union does not represent the majority of Bargaining Unit employees. An actual loss of majority support needs to be proved, not simply doubt about majority status, before an employer can withdraw recognition from a union.

UGL at 806, fn. 21 (citation omitted). As addressed in *Bishop v. NLRB*, where the decertification petition is submitted by employees, where a majority of the employees in a unit genuinely desire to rid themselves of the union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.

IV. CONCLUSION

There is no need and no good reason to change the current blocking charge policy. For the above and other reasons, this Board should deny Petitioner's Second Request for Review.

Respectfully submitted this 21st day of May 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2018, a true and correct copy of the Union's Opposition to Petitioner's Second Request for Review was filed electronically with the Executive Secretary using the NLRB e-filing system and copies were emailed to:

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July 9, 2018

Amanda K. Freeman, Staff Attorney
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Sent via email: akf@nrtw.org

Re: Apple Bus Company
Case 19-RD-216636

Dear Ms. Freeman:

This is to notify you that the petition in the above-captioned case will be held in abeyance pending the investigation of the 8(a)(3) allegation of the unfair labor practice charge in Case 19-CA-222039. In Case 19-CA-222039, the International Brotherhood of Teamsters, Local 959 ("Union") alleges that the Employer has violated Sections 8(a)(3) and (5) of the Act by discharging employee Toni Knight ("employee Knight") because of her membership and activities on behalf of the Union, and by failing to provide the Union with requested information, including a copy of the policy relied upon as the basis for employee Knight's discharge. The discharge of employee Knight, if found to be meritorious, could interfere with employee free choice in an election, were one to be conducted (See Representation Casehandling Manual Section 11730.2) As such, the Region cannot process the petition further until final disposition of the 8(a)(3) allegation in the afore-mentioned unfair labor practice charge.

Right to Request Review: Pursuant to Section 102.71 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review shall be submitted in eight copies, unless filed electronically, with a copy filed with the regional director, and all copies must be served on all the other parties. The request must contain a complete statement setting forth facts and reasons upon which the request is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time)** on Friday, July 20, 2018, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on Monday, July 23, 2018.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request

for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

The Board may grant special permission an extension of time within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the regional director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

RONALD K. HOOKS
Regional Director

cc: Office of the Executive Secretary (by e-mail)

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Apple Bus Company,
Employer,
Case No. 19-RD-216636
and

General Teamsters Local 959,
Union,
and

Elizabeth Chase,
Petitioner.

PETITIONER'S THIRD REQUEST FOR REVIEW

Pursuant to National Labor Relations Board ("NLRB") Rules and Regulations §§ 102.67 and 102.71, Petitioner Elizabeth Chase ("Petitioner" or "Chase") submits this Request for Review of the Regional Director's July 9, 2018 election block (Ex. A, Regional Director's Letter Holding in Abeyance, *Apple Bus Co.*, Case No. 19-RD-216636 (July 9, 2018)), the third one in this matter. As noted by several Board members, cases like this, which halt employee decertification elections in their tracks, raise "compelling reasons for reconsideration of [a] . . . Board rule or policy." Rules & Regulations §§ 102.71(b)(1), (2); *see, e.g.*, *Metro Ambulance Services*, 10-RC-208221 (Order of July 17, 2018) (Chairman Ring and Member Emanuel stating there are "significant issues with the Board's Election Rule and the law pertaining to blocking charges that potentially frustrate the rights of employees, and they believe the policy should be reconsidered."). The current "blocking charge" rules effectively halt decertification elections based upon a union's unproven and contested unfair labor practice allegation, which is contrary to the Act's purpose. As she has done before, Ms. Chase again urges the Board to re-evaluate its continued allowance of strategic, predictable, and dilatory "blocking charges" that continually

allow General Teamsters Local 959 ("Union") to prevent a decertification election in this case. This case is an appropriate vehicle for the Board to do so.

FACTS

Pursuant to a contract it held with the Kenai Peninsula Borough School District ("School District"), First Student, Inc. employed Chase and her fellow bargaining unit employees at various times from 2008 until June 2017 to provide school bus transportation services in Alaska. Ex. B, Regional Director's Decision & Order at *1, *Apple Bus Co.*, Case No. 19-RD-203378 (Aug. 28, 2017), Request for Review denied, 2017 WL 6403493 (Dec. 14, 2017). First Student ceased to be the employer at midnight on June 30, 2017 when the School District's transportation contract with Apple Bus Company ("Employer") for the 2017–2018 school year became effective. *Id.* at *2. Employer and Union first met on February 24, 2017 to begin negotiations on a new collective bargaining agreement, and have continued to negotiate by telephone and in person since then. *Id.* at *2–*3.

Faced with the successor bar's February 24, 2018 expiration and its lack of majority support,[1] the Union strategically filed five unfair labor practice charges ("ULP")—"blocking charges"—against Employer, four in January, Case Nos. 19-CA-212764, 19-CA-212776, 19-CA-212798, 19-CA-212813 (all filed Jan. 5, 2018), and one eleven days before the bar's expiration, Case No. 19-CA-214770 (Feb. 13, 2018).[2] In these charges, the Union alleged the Employer refused to furnish information, unilaterally modified the contract, and refused to

[1] On July 31, 2017, Chase filed her first decertification petition, in Case No. 19-RD-203378. Ex. B, at *3. At the Union's behest, the Regional Director dismissed as "premature" Petitioner's first petition on August 28, 2017 based on the "successor bar" doctrine adopted by a divided Board in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011). Ex. B, at *3–*5. The Board denied review. *See* 2017 WL 6403493 (Dec. 14, 2017). The "successor bar" is not at issue here because, under the logic of the Regional Director's Decision and Order, the one year "successor bar" expired on February 24, 2018. Ex. B, at *4.

[2] On June 25, 2018, the Regional Director approved the Union's withdrawal of this charge.

bargain, all of which the employees were most likely unaware of or had no knowledge of. The Employer is contesting all of these ULPs, and no complaint has been issued.

On February 26, 2018, Chase presented a majority decertification petition to the Employer asking it to withdraw recognition and cease bargaining with the Union pursuant to *Dura Art Stone, Inc.*, 346 NLRB 149 (2005). The Employer refused to do so, and Chase filed a ULP against Apple Bus for continuing to bargain with a minority union, which is still pending. Case No. 19-CA-216719 (filed Mar. 16, 2018).

Because the Employer refused to withdraw recognition of the minority union, Chase filed this case on March 15, 2018, her *second* decertification petition, supported by a majority "showing of interest." Without holding a hearing, making a threshold determination as to the five blocking charges' legitimacy, or ordering the Union to prove a "causal nexus" between the alleged Employer infractions and the employees' desire to be rid of this Union, the Regional Director halted this second decertification election effort at the Union's behest on March 20, 2018 based on these blocking charges. Ex. C, Order Postponing Hearing Indefinitely, *Apple Bus Co.*, Case No. 19-RD-216636 (Mar. 20, 2018). On March 28, 2018, Petitioner filed a Request for Review ("First Request for Review") of this decision, challenging the "blocking charge" rule.

Not willing to stop with just five contested charges, the Union filed two more ULPs alleging the Employer bargained in bad faith for a variety of reasons and illegally allowed and/or assisted in the employees' decertification efforts. Case Nos. 19-CA-212890 (Apr. 9, 2018), 19-CA-218755 (Apr. 18, 2018). In the latter ULP, the Union claims Chase and other employees utilized company time, with the support of the company, to decertify the Union. In fact, the opposite is true. Case No. 19-CA-218755. The Region never even bothered to solicit an affidavit from Chase to determine if the Union's blatantly false allegations of Employer taint have any

factual basis. Like the first five blocking charges, these ULPs are meritless, and the Employer vigorously is contesting them. Again, no complaint has been issued.

While the First Request for Review was pending, the Regional Director again held the second decertification election in abeyance on May 2, 2018 (Ex. D, Regional Director's Letter Holding in Abeyance, *Apple Bus Co.*, Case No. 19-RD-216636 (May 2, 2018)), based on the two additional unproven and contested ULPs. The Regional Director did so again without holding a hearing, making a threshold determination as to the blocking charges' legitimacy, or ordering the Union to prove a "causal nexus" between the alleged Employer infractions and the employees' decertification petition. Although the Board denied Petitioner's First Request for Review on May 9, 2018, two members' noted they favor revisiting or reconsidering the Board's blocking charge policy. Ex. E, Order, *Apple Bus Co.*, Case No. 19-RD-216636, 2017 WL 6403493, *1 n.1 (May 9, 2018).[3] Then, on May 15, 2018, Petitioner filed another Request for Review ("Second Request for Review") of the Regional Director's May 2, 2018 decision, again challenging the "blocking charge" rule.

On June 12, 2018, the Union continued its blocking efforts by filing yet another ULP charge, claiming, almost three months after the fact, the Employer unjustifiably terminated Toni Knight ("Knight") solely because she apparently is a known "strong union supporter." Ex. F, Charge Against Employer, Case No. 19-CA222039, *1 n. 1 (June 12, 2018). Without stating the facts surrounding Knight's termination, the Union claims the Employer has a double standard, preferring Union non-members to Union members. *Id*. This new ULP charge baldly alleges

[3] Member Emanuel stated "an employee's petition for an election should generally not be dismissed or held in abeyance based on contested and unproven allegations of unfair labor practices," and Member Kaplan stated he would reconsider the issue in "a future appropriate case." Ex. E, Order, *Apple Bus Co.*, No. 19-RD-216636, 2017 WL 6403493, *1 n.1 (May 9, 2018).

Employer terminated Knight for engaging in an unknown prohibited conduct while it continues to employ Chase, the decertification petitioner who, the Union claims, has engaged in identical prohibited conduct. *Id*. Chase, however, has not committed the same violation—leaving school children untended on the school bus while it was running, nor can the Union establish otherwise. Ex. G, Declaration of Elizabeth J. Chase, ¶ 11. Similar to the other seven ULP charges, the Employer is contesting this one as well, and no complaint has been issued.

On July 9, 2018, while the Second Request for Review was still pending, the Regional Director held the decertification election in abeyance again, until this new ULP is resolved. Ex. A.

ARGUMENT

The Board exists to conduct elections and thereby vindicate employees' rights under the Act to choose or reject union representation. It does not exist to suspend elections arbitrarily, at the unilateral behest of a union that fears loss of its bargaining unit, based on that union's unproven and contested unfair labor practice allegations. *C.f. General Shoe Corp.*, 77 NLRB 124, 126 (1948) (holding the Board should exercise its power to set aside an election "sparingly" because it cannot "police the details surrounding every election" and the secrecy in Board elections empowers employees to express their true convictions). The Board's "blocking charge" rules deny Petitioner and the Apple Bus employees their fundamental National Labor Relations Act ("NLRA" or "Act") Sections 7 and 9 rights and allow the Union to "game the system" and strategically delay the *decertification* election—in contrast to the Board's current policy of rushing all *certification* petitions to an election while prohibiting "blocks" under any circumstances. *See Representation-Case Procedures*, 79 Fed. Reg. 74308, 74430–74460 (Dec. 15, 2014).

Even if the Union's latest ULP had merit, which it does not, there is no causal nexus between the Union's contested allegations and the current decertification petition. As demonstrated by the first decertification petition, this Union has always faced significant (if not majority) employee opposition. Ex. B, at *1. Yet, the Regional Director has now halted the election, based on the blocking charge rules, for the third time. Ex. A. Despite her valid election petition, Petitioner's and other employees' exercise of their Section 7 and 9 rights essentially are nullified by the Union's unfounded and unproven allegations, which to date have not even generated the issuance of a complaint against the Employer.

The difference between certification and decertification is an artificial one. The Board should stop applying a double-standard, order Petitioner's election to proceed, and follow former Chairman Miscimarra's urging to implement a wholesale revision of the "blocking charge" rules. *Cablevision Systems Corp.*, Case 29-RD-138839, *1 n.1 (June 30, 2016) (Order Denying Review); *see also Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 426 (4th Cir. 2001) (noting Section 7 "guards with equal jealousy employees' selection of the union of their choice and their decision not to be represented at all"); *Valley Hosp. Med. Ctr., Inc. & SEIU Local 1107*, 28-RD-192131, 2017 WL 2963204 (Order Denying Review, July 6, 2017). In the alternative, the Board should require the Region to conduct a *Saint-Gobain* hearing as a precondition to blocking Petitioner's decertification election. *See Saint-Gobain Abrasives, Inc.*, 342 NLRB 434 (2004).

I. The Board's "blocking charge" policy is inconsistent with the Act's purpose and should be overruled.

In this case, the Employer took no action that interfered with employee free choice. However, even if, *arguendo*, the Employer actually committed the violation alleged in the Union's new ULP, it had no impact on the already filed petition and the employees' statutory

right to petition for a decertification election should not be trampled because the Employer acted unlawfully.

A. The Act exists to protect employees' rights.

NLRA Section 7 grants employees a statutory right to refrain from forming, joining, or assisting a labor organization. 29 U.S.C. § 157. Concomitant with that right to refrain, NLRA Section 9(c)(1)(A)(ii) grants employees a statutory right to petition for a decertification election subject only to the express limitation preventing such an election from being held within twelve months of a previous election. 29 U.S.C. §§ 159(c)(1)(a) & (c)(3). Employees' Section 7 right of free choice is the NLRA's paramount concern, and such rights should not be denied based on arbitrary rules, "bars," or "blocks" created by the Board. *Pattern Makers' League v. NLRB*, 473 U.S. 95, 104 (1985); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992) (noting Section 7 confers rights only on employees, not unions and their organizers); *see also Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) (noting employee free choice is the "core principle of the Act" (quotation marks and citation omitted)).

An NLRB conducted secret-ballot election is the preferred mechanism by which employees may exercise their free choice rights, whether the election is for certification or decertification. *See Levitz Furniture Co. of the Pac., Inc.*, 333 NLRB 717, 725–26 (2001). Such elections promote workplace peace by ensuring, first, the employees support the representative empowered to speak for them, and second, the exclusive representative is motivated to represent the employees well in any and all interactions with the employer. Yet, the "blocking charge" policy, which has no statutory foundation, sacrifices the employees' free choice rights to an unpopular union's Machiavellian maneuvering.

B. The "blocking charge" policy infringes on employees' rights

The Board's "blocking charge" practice is not governed by statute. Rather, its creation and application lies within the Board's discretion to effectuate the Act's policies. *American Metal Prods. Co.*, 139 NLRB 601, 604–05 (1962); *see also* NLRB Casehandling Manual (Part Two) Representation Sec. 11730 et seq. (setting forth in detail the "blocking charge" procedures). Instead of carrying out the Act's purpose, the "blocking charge" policy undercuts Petitioner's and other employees' statutory rights.

The "blocking charge" policy operates under a system of "presumptions" that prevent employees from exercising their Section 7 and 9(c)(1)(A)(ii) statutory rights. As a result, a union can stop any decertification election simply by filing a ULP against an employer, regardless of that ULP's veracity. When a blocking charge is filed, the Regional Director invariably holds the decertification proceeding in abeyance, which precisely is what happened, and continues to happen, in this case. No matter how offensive the ULP, the decertification election should be held once there is a showing of 30% interest, the ballots counted, and any challenges or objections sorted out thereafter, just as with certification elections.

Here, the Regional Director's immediate application of the "blocking charge" policy ignored, and continues to ignore, Chase's and her fellow employees' longstanding desire to exercise their right to be free from the Union's representation. By automatically blocking this election, the Regional Director treats Petitioner and her fellow employees like children unable make up their own minds. Even assuming, *arguendo*, Employer unlawfully terminated Knight, as alleged, "[t]he wrongs of the parent should not be visited on the children, and the violations of [the employer] should not be visited on these employees." *Overnite Transp. Co.*, 333 NLRB 1392, 1398 (2001) (Member Hurtgen, dissenting); *see also Cablevision Systems Corp.*, Case 29-RD-138839 (June 30, 2016) (Order Denying Review) (Member Miscimarra, dissenting).

The Board's "blocking charge" policy often denies decertification elections even where, as here, the employees may not be aware of the alleged employer misconduct, the employees are the very ones accused of being involved in the wrongdoing and can disprove it, or the employees' longstanding disaffection from the union springs from a wholly independent source, which predates the alleged infractions. Use of "presumptions" to halt decertification elections serves only to entrench unpopular incumbent unions, thereby forcing an unwanted representative on employees. Judge Sentelle's concurrence in *Lee Lumber* specifically highlights the inequitable nature of the Board's policies. 117 F.3d at 1463–64.

C. The "blocking charge" policy should be overhauled.

Discretionary Board policies, such as the Board's blocking charge policy, should be reevaluated when industrial conditions warrant. *See, e.g.*, *IBM Corp.*, 341 NLRB 1288, 1291 (2004) (holding the Board has a duty to adapt the Act to "changing patterns of industrial life" and the special function of applying the Act's general provisions to the "complexities of industrial life") (citation omitted)). Given that a prior Board majority decided to rush all certification petitions to fast elections and hold objections and challenges until afterwards, 79 Fed. Reg. 74308 (Dec. 15, 2014), the current Board should adopt a neutral and balanced policy that will treat decertifications the same way and further protect employees' rights.

It is time to apply the election rules equally to both certification and decertification elections. Fairness considerations aside, the Board's continued practice of delaying and denying only decertification elections based upon blocking charges has faced severe judicial criticism. In *NLRB v. Minute Maid Corp.*, the Fifth Circuit stated:

> [T]he Board is [not] relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold otherwise would put the

> union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented.

283 F.2d 705, 710 (5th Cir. 1960); *see also Surratt v. NLRB*, 463 F.2d 378 (5th Cir. 1972) (rejecting application of the blocking charge policy); *Templeton v. Dixie Printing Co.*, 444 F.2d 1064 (5th Cir. 1971) (same); *NLRB v. Gebhardt-Vogel Tanning Co.*, 389 F.2d 71, 75 (7th Cir. 1968) (quoting *Minute Maid Corp.*, 283 F.2d at 710); *T-Mobile USA Inc. v. NLRB*, 717 F. App'x 1, 4 (D.C. Cir. 2018) (Sentelle, J., dissenting) (noting the Board's blocking charge policy causes "unfair prejudice").

Here, the Board should take administrative notice of its own statistics, which show approximately 30% of decertification petitions are "blocked," whereas certification elections are *never* blocked for any reason. *See* NLRB, *Annual Review of Revised R-Case Rules*, https://www.nlrb.gov/sites/default/files/attachments/news-story/node-4680/R-Case%20Annual%20Review.pdf. Unlike the procedure used to deal with decertification petitions, the Board conducts all certification elections first, counts the ballots, and settles any objections or challenges afterwards. If the Board can rush certification petitions to quick elections by holding all objections and challenges until afterwards, it surely can do the same for decertification petitions. It is time the Board replace its discriminatory "blocking charge" rules, which apply only to employees seeking to exercise their right to refrain from supporting a union, with a system that affords employees seeking decertification elections *the same rights* as employees seeking a certification election.

In short, the Board should order Region 19 to proceed to an election without further delay allowing Petitioner and her colleagues to make their own free choice about unionization, which they are well equipped to do. The employees' paramount Section 7 and 9 rights are at stake, and their rights should not be disregarded because their Employer is alleged to have committed

mistakes. This especially is true here, where a raft of Union ULP charges has yielded not a single formal complaint against Apple Bus. Petitioner urges the Board to overrule or overhaul its "blocking charge" policies to protect the NLRA's true touchstone—*employees*' paramount Section 7 free choice rights. *Int'l Ladies Garment Workers v. NLRB*, 366 U.S. 731, 737 (1961) (holding "there could be no clearer abridgment of § 7 of the Act" than for a union and employer to enter into a collective bargaining relationship when the union lacks a majority of employees support).

D. The current case demonstrates the "blocking charge" policy's impingement on employees' rights.

The Regional Director's denial of Petitioner's and employees' opportunity to exercise their NLRA Section 9(c)(1)(A)(ii) right to petition for a decertification illustrates the current "blocking charge" policy's absurdity. The Employer perpetrated no "wrongs." Not only is the Union's newest charge baseless, it also publicly accuses Petitioner of violating a company policy, which is not the case. Ex. F. The Union's latest ULP about Knight was filed to further delay and postpone the decertification election rather than to advocate on behalf of wronged employees, making application of the "blocking charge" policy even more egregious. Despite majority support for decertification well before the alleged misconduct occurred, the Region continues to postpone indefinitely an election proceeding based upon the notion that some connection might exist between that petition and the allegedly unlawful termination of Knight.

Application of *Master Slack Corporation* compels a determination that the ULP at issue should not block the election. 271 NLRB 78 (1984). *Master Slack* demands a ULP be "of a character as to either affect the Union's status, cause employee disaffection, or improperly affect the bargaining relationship itself," or, stated more succinctly, "the unfair labor practices must have caused the employee disaffection here or at least had a 'meaningful impact' in bringing

about that disaffection." *Id.* at 84. In order to determine whether a causal connection exists, one must perform an analysis of several factors including: "[1] the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; [2] any possible tendency to cause employee disaffection from the union; and [3] the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union." *Id.* (citing *Olson Bodies, Inc.*, 206 NLRB 779 (1973)).

Even assuming the Employer's termination of Knight is a violation of some kind, and even assuming that violation would have a "detrimental or lasting effect on employees," cause "employee disaffection from the union," and negatively affect "employee morale," the Employer would have had to fire Knight before the majority of the bargaining unit decided they had their fill of Union representation. However, Petitioner and the other bargaining unit members had already determined they were dissatisfied with the Union and had filed their second decertification nearly two weeks *before* the Employer terminated Knight. All of this occurred well in advance of the Union's new ULP, which itself occurred three months after Knight's termination. The sequence of events here removes even the specter of taint from this decertification petition and leads to the conclusion that the ULP was a strategic attempt to further block the election.

While the newest ULP alleges coercive conduct based on a discharge, which can be the basis for dissatisfaction with the union, such is not the case here where the ULP's faulty allegations further remove any possible taint on the petition. *See Tenneco Auto, Inc. v. NLRB*, 716 F.3d 640, 650 (D.C. Cir. 2013) (noting violations that cause dissatisfaction with a union involves, among other things, "coercive conduct such as discharge," but finding employer's refusal to provide union addresses of replacement employees, requirement that employees obtain

company permission before posting materials, and discipline of union advocate did not taint petition). The Union implies the Employer discharged Knight only because she supported the Union while it continued to employ Chase because she opposes the Union. Ex. F. It does so claiming both employees committed the same infraction allegedly for some unknown company policy, but only the union supporter suffered consequences. *Id*.

However, Knight was discharged for leaving children alone on the school bus while it was running, which is against training and company policies and was one under First Student and is an infraction that Chase has never committed nor been warned or accused of committing. *See* Ex. G, ¶ 11. Not only is there no evidence that Employer knew Knight was an avid union supporter, and that this also formed the basis of her discharge, Chase and her fellow employees could not have known about Knight's firing when they filed this second decertification case on March 15, 2018 because Knight was not fired until March 28, 2018. Furthermore, the Union did not file its ULP until June 12, 2018, almost three months after Employer fired Knight for leaving children unattended. Ex. F.

There is no causal connection, as required by *Master Slack*, between this ULP and Petitioner's decertification petition. Here, employees had been disenchanted with the Union well before they filed this second decertification effort. Any way the Union's charge is evaluated, it lacks merit, and, even if it does not, it is insufficient to block the election and nullify employees' rights under NLRA Sections 7 and 9.

Finally, as Petitioner noted in her previous requests for review, this bargaining unit largely consists of school bus drivers who do not work for the Employer during the summer months. In addition to allowing the Union to run roughshod over the members it is supposed to represent and block elections for fear of losing power, the Board's blocking charge rules are

being abused to delay the election and drag it through the summer months, when many employees are not present to cast a vote. While this strategic delay may be to the Union's advantage, it is contrary to the Act's purpose and is to Petitioner's detriment.

II. Alternatively, the Board should require the Union to meet its burden of proof, in an adversarial hearing, that there exists a "causal nexus" between the alleged Employer infractions and the employees' decertification desire.

The Regional Director deprived Petitioner and other employees of their Section 7 rights by blocking their decertification election without evidence that the alleged ULP influenced the employees to petition for the Union's removal. The Region's proper course of action is to hold the election, count the ballots, and then schedule a hearing *after* the election, if and when the Union files objections.

In the alternative, the Regional Director should, prior to blocking the election, require the Union to prove the existence of a "causal nexus" at a *Saint-Gobain* evidentiary hearing. In order for an unfair labor practice to taint a petition or block an election, there must be a "causal nexus" between the Employer's actions and the employees' dissatisfaction with the Union. *Master Slack Corp.*, 271 NLRB 78 (1984). But here, there has been no such showing and the Regional Director did not compel the Union to make such a showing. Not only did the alleged violation occur after the decertification was filed negating any causal connection, Petitioner has not even been asked by the Region for a statement whereby she can deny the most recent false allegations that she left her school bus unattended while there were children still on it. Petitioner is left to speculate about the Union's claimed causal connection between the employees' motivations for wanting to oust the Union and its new ULP.

Thus, at the very least, the Board should require the Regional Director to hold a *Saint-Gobain* hearing as a precondition to blocking an election based on the Union's ULPs. *Saint*

Gobain Abrasives, Inc., 342 NLRB at 434. At such an adversarial hearing the Union will be required to meet its burden of proof that a "causal nexus" exists. *See, e.g.*, *Roosevelt Mem'l Park, Inc.*, 187 NLRB 517, 517–18 (1970) (holding a party asserting a bar's existence bears the burden of proof). As the Board noted in *Saint-Gobain*, "it is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights." *Id.* But, due to the lack of a *Saint-Gobain* hearing, all this record contains is speculation.

The Regional Director has erred, again, by reflexively blocking this election and by failing to require the Union to prove, in an adversarial hearing, the "causal nexus" between the allegations in its unfair labor practice charges and the employees' continued disaffection. Petitioner's and her fellow employees' Section 7 and 9 rights have been rendered meaningless by this farcical process.

CONCLUSION

The Board should grant Petitioner's Request for Review and order the Regional Director to process this decertification petition and count the ballots. In addition, the Board should overrule or substantially overhaul its "blocking charge" policy.

Respectfully submitted,

/s/ Amanda K. Freeman

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2018, a true and correct copy of the foregoing Request for Review was filed with the Executive Secretary using the NLRB e-filing system, and copies were sent to the following parties via e-mail, as noted:

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPLE BUS COMPANY
Employer,
and

Case No. 19-RD-216636

GENERAL TEAMSTERS LOCAL 959
Union,
and

ELIZABETH CHASE
Petitioner.

UNION'S OPPOSITION TO PETITIONER'S THIRD REQUEST FOR REVIEW

I. INTRODUCTION

On July 31, 2017, Elizabeth Chase (Chase), filed a decertification petition (Case No. 19-RD-203378).

On August 28, 2017, Chase's decertification petition was dismissed by the Regional Director on the basis of *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), and the successor bar doctrine (Exhibit B to Petitioner's Third Request for Review).

On September 25, 2017, Chase filed a Request for Review of the Regional Director's Decision and Order. The same day, Apple Bus filed a Request for Review of the Regional Director's Decision and Order.

On December 14, 2017, the National Labor Relations Board (Board) issued an Order denying the two Requests for Review because they raised no substantial issues warranting review.

On March 15, 2018, Chase filed another decertification petition (Case No. 19-RD-216636).

On March 20, 2018, the Regional Director issued an Order Postponing Hearing Indefinitely due to five blocking unfair labor practice charges filed by the Union (Exhibit C to Petitioner's Third Request for Review).

On March 28, 2018, Chase filed Petitioner's Request for Review of the Regional Director's March 20, 2018 Order Postponing Hearing Indefinitely.

On or about April 9, 2018, Apple Bus filed Employer's Response to the Petitioner's Request for Review and Union's Brief in Opposition.

On May 2, 2018, the Regional Director notified Chase that the petition would be held in abeyance pending the investigation of unfair labor practice charges in Cases 19-CA-218290 and 19-CA-218755 (Exhibit D to Petitioner's Third Request for Review).

On May 9, 2018, this Board issued an Order denying Petitioner's Request for Review of the Regional Director's determination to hold the petition in abeyance as it raised no substantial issues warranting review (Exhibit E to Petitioner's Third Request for Review).

On May 15, 2018, Chase filed Petitioner's Second Request for Review. The Union filed its Opposition.

On July 9, 2018, the Regional Director notified Chase that the petition would be held in abeyance pending the investigation of the unfair labor practice charge in Case 19-CA-222039 (Exhibit A to Petitioner's Third Request for Review).

On July 23, 2018, Chase filed Petitioner's Third Request for Review of the Regional Director's July 9, 2018 election block. Chase cited Board Rules and Regulations 102.67 and 102.71 and alleged compelling reasons for reconsideration of a Board rule or policy (Third Request for Review at 1).

The Union files this Opposition to Petitioner's Third Request for Review. The Union incorporates by reference the Decision and Order (DO) of the Regional Director in Chase's first decertification petition, Case 19-RD-203378 (see DO, Exhibit B to Third Request for Review). There are no compelling reasons to grant Chase's Third Request for Review. Chase's second

decertification petition was not dismissed or denied by the Regional Director. It was merely postponed or held in abeyance pending investigation and decisions on the Union's unfair labor practice charges.

II. FACTS

From 2008-2017, the Union represented First Student, Inc. employees performing services for the Kenai Peninsula Borough School District. DO at 1.

After being awarded a bid, Apple Bus performed the services starting July 1, 2017. The Union and Apple Bus met on February 24, 2017 to discuss a probable collective bargaining relationship. For several months, the Union asked Apple Bus to agree to be bound by the First Student collective bargaining agreement (CBA) but Apple Bus refused. The Union rejected an agreement presented by Apple Bus. DO at 2.

On June 8, 2017, Apple Bus mailed job offer letters to 105 of the 126 former First Student employees. DO at 2. By August 11, 2017, 98 former First Student employees and 4 persons who had not worked for First Student accepted positions with Apple Bus. Apple Bus expected to employ 115 Bargaining Unit employees by August 14, 2017. DO at 3.

On July 18 and 19, 2017, the Union and Apple Bus first met to bargain for a new CBA. Tentative agreement was reached on Declaration of Purpose, Recognition, Maintenance of Standards, and Union Stewards articles. DO at 2-3. The Union and Apple Bus met again on August 9, 10, and 11, 2017. DO at 3. Further negotiations have been held since then. The Union asked to schedule more days for negotiations but Apple Bus usually only agreed to meet two days a month, refused to schedule dates past the next month, and canceled some negotiation sessions.

Apple Bus sent out job offer letters in June 2017, hired a majority of Bargaining Unit employees in July 2017 at the earliest, and did not have a majority of Bargaining Unit employees hired and on the job until August 14, 2017. DO at 2-3 (emphasis added).

The Regional Director noted, "A 'reasonable period of bargaining' for the purposes of the successor bar doctrine ... is 'measured from the date of the first bargaining session after recognition.'" DO at 3 (citations omitted). Based on the foregoing facts, and notwithstanding the Regional Director's DO, the Union urges that the successor bar should be measured from no earlier than the date of the first substantive bargaining meeting of the Union and Apple Bus on July 18, 2017 and should have lasted until at least July 18, 2018. However, since Apple Bus did not have a majority of Bargaining Unit employees hired and on the job until August 14, 2017 (DO at 2-3), the Union urges that the successor bar should still be seen as in effect in this case.

Apple Bus never questioned the Union's majority status and agreed to a Recognition article. DO at 3. Chase argues that most employees were unaware of the status of negotiations or employer misconduct (Third Request for Review at 3, 9). However, four Apple Bus employees have been on the Union negotiating team and directly involved when the Union and Apple Bus have negotiated. The Union has kept employees informed through meetings, events, gatherings, publications, and social media.

III. ARGUMENT IN OPPOSITION TO REVIEW

Webster's II New Riverside University Dictionary defines "compel" or "compelling" as, "1. To force, drive, or constrain, 2. To make necessary." Chase may wish to see the law and blocking charge policy changed but there are no compelling reasons to change the policy.

A. The successor bar provides stability for a bargaining relationship

UGL restored the "successor bar" doctrine. Under the doctrine, when a successor employer acts in accordance with its legal obligation to recognize an incumbent representative of its employees, that representative is entitled to represent the employees in collective bargaining with their new employer for a reasonable period of time, without challenge to its representative status. *UGL* at 801, citing *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999).

Analogous bar doctrines are well established in labor law, based on the principle that "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed." The bar promotes a primary goal of the National Labor Relations Act (NLRA) by stabilizing labor-management relationships and promoting collective bargaining, without interfering with the freedom of employees to periodically select a new representative or reject representation. *UGL* at 801.

The *UGL* Board observed that the transition from one employer to another threatens to seriously destabilize collective bargaining, even when the new employer must recognize the incumbent union. The new employer is free to choose (on any non-discriminatory basis) which of the predecessor's employees it will keep and which will go. It is free to reject an existing CBA. It will often he free to establish unilaterally all initial terms and conditions of employment. In a setting where everything employees have achieved through collective bargaining may be swept aside, the union must deal with a new employer and, at the same time, persuade employees that it can still effectively represent them. *UGL* at 805.

On the effect of a successor situation on employees, *UGL* noted, "After being hired by a new company ..., employees initially will be concerned primarily with maintaining their new jobs. *In fact, they might be inclined to shun support for their former union, especially if they believe that such support will jeopardize their jobs with the successor....* Without the presumptions of majority support ..., an employer could use a successor enterprise as a way of getting rid of a labor contract and of exploiting the employees' hesitant attitude towards the union to eliminate its continuing presence." *UGL* at 803 (citation omitted).

B. The successor bar protects employee free choice

The *UGL* Board noted that the *St. Elizabeth Manor* Board rejected the view that the "successor bar" gave too little weight to employee freedom of choice, which it recognized as a

"bedrock principle of the statute." The crucial aspect of the balance struck by the successor bar was that the bar "extends for a 'reasonable period,' not in perpetuity." *UGL* at 804, 808. *UGL* defined the reasonable period of bargaining mandated by the successor bar. Where the successor employer recognizes the union, but unilaterally announces and establishes initial terms and conditions of employment before proceeding to bargain, the "reasonable period of bargaining" will be a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the union and the employer. The Board will apply the *Lee Lumber* analysis to determine whether the period has elapsed. Where the parties are bargaining for an initial contract, because the destabilizing factors associated with successorship are at their height, a longer insulated period is appropriate. *UGL* at 808-809.

C. The blocking charge policy is consistent with the purpose of the NLRA, aims to protect employee rights, and should not be changed; the current case shows no reason to change the blocking charge policy; no adversarial hearing is needed

Chase alleges that the Regional Director did not hold a hearing, there was no proof of a "causal nexus," and the blocking charge rules halt decertification elections simply based on a union filing an unfair labor practice charge. Chase claims that the unfair labor practice charges are without merit (Third Request for Review at 3-4, 11-13). Chase argues that the blocking charge rules allow unions to delay all decertification elections (Third Request for Review at 1). Chase cynically and inaccurately portrays the Regional Director's Decision and Order as at the Union's behest (Third Request for Review at 3, 5), invariable (Third Request for Review at 8), immediate application (Third Request for Review at 8), automatic (Third Request for Review at 8), based upon some notion that some connection might exist (Third Request for Review at 11), and reflexive (Third Request for Review at 15) in response to the Union filing blocking charges. Chase fails to

acknowledge the requirements and guidance of the Board's Casehandling Manual Part Two Representation Proceedings:

11730 Blocking Charge Policy – Generally

The filing of a charge does not automatically cause a petition to be held in abeyance. When a party to a representation proceeding files an unfair labor practice charge and desires to block the processing of the petition, the party must file a request that the petition be blocked and must simultaneously file a written offer of proof in support of the charge that contains the names of the witnesses and a summary of each witness's anticipated testimony … The charging party requesting to block the processing of the petition must promptly make its witnesses available. If the regional director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employees free choice in an election or would be inherently inconsistent with the petition itself, … the regional director shall continue to process the petition and conduct the election where appropriate … [T]he blocking charge policy is premised solely on the Agency's intention to protect the free choice of employees in the election process.

As stated in the last sentence, the blocking charge policy is intended to protect the free choice of employees in the election process. The policy began in 1937 "as part of the Board's function of determining whether an election will effectuate the policies of the Act." *American Metal Products*, 139 NLRB 601 (1962); *U.S. Coal & Coke*, 3 NLRB 398 (1937). The Board's principal role in elections is to ensure that employees are able to express their choice free of unlawful coercion. The policy aims to ensure that interference with employee choice is remedied before an election. The policy gives a regional director discretion to not process a petition in the face of a pending unfair labor practice charge if the regional director believes that employee free choice is likely to be impaired. Here, it must be assumed that the Regional Director properly followed the above requirements and guidance and sought to protect employee free choice in the election process. The Regional Director's May 2, 2018 notification (Exhibit D to Third Request for Review) stated, "… The allegations set forth in Cases 19-CA-218290 and 19-CA-218755, if found to be meritorious, could interfere with employee free choice in an election, were one to be conducted (See Representation Casehandling Manual Section 11730.2)." Similarly, the Regional

Director's July 9, 2018 notification (Exhibit A to Third Request for Review) stated, "... In Case 19-CA-222039 ... The discharge of employee Knight, if found to be meritorious, could interfere with employee free choice in an election, were one to be conducted (See Representation Casehandling Manual Section 11730.2). As such, the Region cannot process the petition further until final disposition of the 8(a)(3) allegation in the afore-mentioned unfair labor practice charge."

The unfair labor practice charges, with offers of proof for each, filed by the Union have raised serious concerns about unlawful Apple Bus coercion and interference with employee choice including failure to bargain in good faith by:

1. Failing to provide information the Union requested during contract negotiations - information necessary for the Union to bargain for a new CBA. Charge 19-CA-212764.

2. Unilaterally changing employees' wages during CBA negotiations. Charge 19-CA-212798.

3. Unilaterally changing terms and working conditions for employees during CBA negotiations. Charge 19-CA-212776.

4. Failing to agree to schedule negotiations meetings and meet with the Union at reasonable dates/times for the purpose of bargaining a CBA. Charge 19-CA-212813.

5. Failing to provide prior notice to the Union re changes it was going to make during the course of CBA negotiations for holiday pay, standby pay, park out benefits/pay, and longevity; during the course of bargaining the Company unilaterally provided gifts to certain employees in the form of holiday pay, standby pay, and park out pay/benefits without prior knowledge of the Union; unilaterally ceasing holiday pay after it had established a practice of paid holidays. Charge 19-CA-214770.

6. Surface bargaining; lack of commitment to the bargaining process as evidenced by failure to meet with the Union at reasonable times, including the frequency of meetings, actual bargaining time, the number of tentative agreements reached, the lengthy caucuses taken by the Company for relatively non-complex issues, continued refusal to negotiate a Union security clause, and refusal to negotiate over certain articles/sections of the proposed CBA, among other things. Charge 19-CA-218290.

7. Allowing and/or assisting certain employees to pursue decertifying the Union; allowing certain employees to utilize Company resources, including decertification activity on Company time, among other things. Charge 19-CA-218755.

8. Discriminating against employees based on whether they support or do not support the Union and thereby discouraging employees from supporting the Union; termination of Toni Knight. Charge 19-CA-222039.

With respect to Charge 19-CA-222039, Chase fails to mention (Third Request for Review at 4-5) that, as stated in the Charge, Union supporter Toni Knight was terminated for allegedly violating a policy that neither she nor the Union had ever been given, despite requests for the policy. In her Declaration (Exhibit G to Petitioner's Third Request for Review), Petitioner, Chase, very carefully chose her words to state that she never left her bus unattended while children were on it, and she was never warned or disciplined for doing so. Chase failed to mention that in 2017 she was given a written warning and ordered to undergo retraining for failing to set her parking brake before getting out of the driver's seat, which resulted in a preventable accident (see Exhibit "A" attached). Chase only received a written warning while Toni Knight was terminated for similar conduct. The disparity in treatment of Chase and Toni Knight is evidence of the Employer's continued all-out campaign of intimidation of union supporters, support of decertification efforts, and repeated unfair labor practices.

Chase's reliance (Third Request for Review at 6, 14-15) on *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004), is misguided. In *Saint Gobain* the Regional Director dismissed a decertification petition without a hearing. The Board held that a hearing was a prerequisite to denying the petition. At 434. By contrast, here the Regional Director did not deny or dismiss Chase's petition. A *Saint Gobain* hearing does not have to be separate from the unfair labor practice hearing. A regional director may use the record in an unfair labor practice hearing in making a *Saint Gobain* determination. See, e.g., *NTN-Bower Corp.*, 10 RD 1504 (Order, May 20, 2011). *Saint Gobain* did not address situations, like with Apple Bus, where the employer has encouraged decertification and surface bargained.

Chase desperately attempts to rely on dissenting Board and legal views, Orders, and cases before the 2014 rulemaking (Third Request for Review at 7, 10). But Chase must admit that only 30% of decertification petitions are blocked (Third Request for Review at 10). *Valley Hospital Medical Center, Inc. and SEIU Local 1107*, Case 28-RD-192131 (Order July 6, 2017), denying Requests for Review of the Regional Director's decision to hold the decertification petition in abeyance pending the investigations of unfair labor practice charges, noted:

> Contrary to our colleague's criticism of the Board's longstanding blocking charge policy, we find it continues to serve a valuable function. As explained in our 2014 rulemaking, the blocking charge policy is critical to safeguarding employees' exercise of free choice. See Representation-Case Procedures, 79 Fed. Reg. 74308, at 74418-74420, 74428-74429 (Dec. 15, 2014). Indeed, "[i]t advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference." Id. at 74429. Nevertheless, in response to commentary and our colleague's concerns, the Election Rule modified the policy to limit opportunities for unnecessary delay and abuse. Id. at 74419-20, 74490.
>
> We also observe that in upholding the Election Rule, the U.S. Court of Appeals for the Fifth Circuit recently rejected an argument similar to our colleague's ... and found that the Board did not act arbitrarily by implementing various regulatory changes resulting in more expeditious processing of representation petitions without eliminating the blocking charge policy altogether. See *Associated Builders and Contractors of Texas, Inc. v. NLRB*, 826 F.3d 215, 228 (5th Cir. 2016). In doing so, the court cited with approval its prior precedent in *Bishop v. NLRB*, 502 F.2d 1024 (5th Cir. 1974), wherein the court set forth the following explanation for why the blocking charge policy is justified:
>
> > If the employer has in fact committed unfair labor practices and has thereby succeeded in undermining union sentiment, it would surely controvert the spirit of the Act to allow the employer to profit by his own wrongdoing. In the absence of the 'blocking charge' rule, many of the NLRB's sanctions against employers who are guilty of misconduct would lose all meaning....
> >
> > Nor is the situation necessarily different where the decertification petition is submitted by employees instead of the employer or a rival union. Where a majority of the employees in a unit genuinely desire to rid themselves of the certified union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.
>
> Id. At 1029 (quoting *NLRB v. Big Three Industries, Inc.*, 497 F.2d 43, 51-52 (5th Cir. 1974)).
>
> Chairman Miscimarra favors a reconsideration of the Board's blocking charge doctrine for reasons expressed in his and former Member Johnson's dissenting views to the Board's Election Rule, 79 Fed. Reg. 74308 at 74430-74460 (Dec. 15, 2014), but he

> acknowledges that the Board has declined to materially change its blocking charge doctrine....

The Union has negotiated with Apple Bus to try to reach agreement on a first CBA. The Union has been negotiating virtually everything and the issues are complex. Apple Bus, in an effort to "run out the successor bar clock" and undermine union sentiment, has engaged in repeated unfair labor practices, which caused the Union to file the unfair labor practice charges. Apple Bus has hindered the parties' reaching a CBA in the limited time allotted for the Union to do so. Due to the repeated unfair labor practices of Apple Bus, the Union needs more time to reach agreement on the terms of a first CBA. Chase's second decertification petition would deny the Union that additional time. The blocking charges and Regional Director's actions were appropriate.

Chase alleges that the unfair labor practice charges and blocking charges are without merit (Third Request for Review at 3-6). Chase has tried to downplay the egregious unfair labor practices of Apple Bus as like an employer offering assistance by discussing continuing the same benefits or the disadvantages of having a union or discussing the advantages and disadvantages of collective bargaining (Second Request for Review at 12, fn. 3.) The Union filed each blocking charge in good faith based on the merits and the information known to the Union. The Board has traditionally had considerable discretion to adopt practices to effectuate the policies of the NLRA. *American Metal Products*, 139 NLRB 601 (1962).

Employers are not entitled to an election caused by their unlawful conduct. *Frank Bros. v. NLRB*, 321 US 702 (1944) (election not appropriate remedy where union lost majority after employer's wrongful refusal to bargain); *Brooks v. NLRB*, 348 US 96 (1954) (employer's refusal to bargain may not be rewarded with the decertification it seeks). The blocking charge policy has been approved by Federal Courts. *Associated Builders and Contractors of Texas, Inc.*, 826 F3d

215, 228 (5th Cir. 2016); *Bishop v. NLRB,* 502 F2d 1024 (5th Cir. 1974); *NLRB v. Big Three Industries, Inc.*, 497 F2d 43, 51-52 (5th Cir. 1974).

The Union should not be forced to proceed to an election when there are serious and substantial concerns that repeated unfair labor practices by Apple Bus have undermined employee free choice. A tainted election may cause additional damage that cannot be remedied by rerunning an election. The blocking charge policy saves the Board from wasting resources on a "contingent" election and forces remediation of the unfair labor practices before an election. No policy of the NLRA is advanced by conducting an election unless employees can vote without unlawful interference and coercion. The blocking charge policy protects against frivolous charges, as indicated by statistics showing a large decline in dismissal of decertification petitions since the new rule went into effect. "Unfair labor practice charges that warrant blocking an election involve conduct that is inconsistent with a free and fair election … there is no inconsistency between the final rule's preservation of that basic policy and the other changes made by the final rule." 79 Fed. Reg. 74429 (December 14, 2014).

Chase claims that the Union has always faced significant employee opposition (Third Request for Review at 6). She previously asserted that her second decertification petition was supported by a majority showing of interest. The Union has no knowledge that it has allegedly lost the support of a majority of Bargaining Unit employees. The Union does not know the details of Chase's alleged petition, how or when signatures were gathered, how many signatures are not valid, and other factors. Apple Bus recognized the Union as the representative of the employees. It has not been proved that the Union does not represent the majority of Bargaining Unit employees. An actual loss of majority support needs to be proved, not simply doubt about majority status, before an employer can withdraw recognition from a union. *UGL* at 806, fn. 21 (citation

omitted). As addressed in *Bishop v. NLRB*, where the decertification petition is submitted by employees, where a majority of the employees in a unit genuinely desire to rid themselves of the union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.

IV. CONCLUSION

There is no need and no good reason to change the current blocking charge policy. For the above and other reasons, this Board should deny Petitioner's Third Request for Review.

Respectfully submitted this 14 day of August 2018.

John Eberhart, General Counsel
General Teamsters Local 959
520 E. 34th Avenue, Suite 102
Anchorage AK 99503

Tel. (907) 751 8563
jeberhart@akteamsters.com

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2018, a true and correct copy of the Union's Opposition to Petitioner's Third Request for Review was filed electronically with the Executive Secretary using the NLRB e-filing system and copies were emailed to:

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave. Suite 2948
Seattle, Washington 98174
ronald.hooks@nlrb.gov and
rachel.cherem@nlrb.gov

Amanda K. Freeman
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield VA 22160
akf@nrtw.org

W. Terrence Kilroy
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City MO 64112
tkilroy@polsinelli.com

John Eberhart
General Counsel
General Teamsters Local 959

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

APPLE BUS COMPANY
Employer

and Case 19-RD-216636

GENERAL TEAMSTERS LOCAL 959
Union

and

ELIZABETH CHASE
Petitioner

ORDER

The Petitioner's Second and Third Requests for Review of the Regional Director's determinations to hold the petition in abeyance are denied as they raise no substantial issues warranting review.[1]

JOHN F. RING, CHAIRMAN

LAUREN McFERRAN, MEMBER

MARVIN E. KAPLAN, MEMBER

Dated, Washington, D.C., August 2, 2018.

[1] For institutional reasons, Chairman Ring and Member Kaplan apply extant law in denying the Petitioner's Requests for Review. However, they would consider revisiting the Board's blocking charge policy in a future appropriate proceeding.

FORM NLRB-6546
(4-15)

Request to Block

International Brotherhood of Teamsters, General Teamsters Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636, It has filed an unfair labor practice
(Case Number)

charge in Case 19-CA-229782 and hereby requests that the petition be blocked by this charge.
(Case Number)

Signature

02/01/2019
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

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Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636. It has filed an unfair labor practice
(Case Number)

charge in Case (Copy of charge attached) and hereby requests that the petition be blocked by this charge.
(Case Number)

Signature

03/06/2019
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Apple Bus Company

b. Tel. No. (816) 618-3310
c. Cell No. (269) 830-6176
f. Fax No. (816) 618-3303
g. e-Mail Stephanie.teters@applebuscompany.com
h. Number of workers employed approximately 120

d. Address *(Street, city, state, and ZIP code)*
230 E. Main Street
Cleveland, MO 64734
(work location: 34234 Industrial Street, Soldotna, AK 99669)

e. Employer Representative
Stephanie Teters

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Public school bus contractor

j. Identify principal product or service
Pupil Transportation

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Within the last six (6) months, the Company has failed to bargain in good faith with the Union by continuing to regressively bargain and to demand that the Union waive its right to bargain over any matter not covered in the cba regardless of whether or not the subject matter was raised in negotiations and give the Company the unilateral right to decide such matters without Union or employee consent.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Brotherhood of Teamsters, Local 959

4a. Address *(Street and number, city, state, and ZIP code)*
520 E. 34th Ave. Suite 102
Anchorage, Alaska 99503

4b. Tel. No. 907-751-8557
4c. Cell No. 907-575-6525
4d. Fax No. 907-751-8595
4e. e-Mail jmarton@akteamsters.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
International Brotherhood of Teamsters, Local 959

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By John Marton
(Signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 520 E. 34th Ave., Suite 102, Anchorage, AK 99503

2/27/2019
(date)

Tel. No. 907-751-8557
Office, if any, Cell No. 907-575-6525
Fax No. 907-751-8595
e-Mail jmarton@akteamsters.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636 . It has filed an unfair labor practice
(Case Number)

charge in Case (Copy of charge attached) and hereby requests that the petition be blocked by this charge.
(Case Number)

Signature

03/06/2019
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

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Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Apple Bus Company

b. Tel. No. (816) 618-3310
c. Cell No. (269) 830-6176
f. Fax No. (816) 618-3303
g. e-Mail Stephanie.Teters@applebuscompany.com

d. Address *(Street, city, state, and ZIP code)*
230 E. Main Street
Cleveland, MO 64734
(work location: 34234 Industrial Street, Soldotna, AK 99669)

e. Employer Representative
Stephanie Teters

h. Number of workers employed
approximately 120

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Public school bus contractor

j. Identify principal product or service
Pupil Transportation

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Within the last six (6) months, the Company has failed to bargain in good faith with the Union by continuing to engage in surface bargaining and delay tactics, especially as evidenced at the bargaining table during the week of February 26, 2019. This is an ongoing and continuing problem.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Brotherhood of Teamsters, Local 959

4a. Address *(Street and number, city, state, and ZIP code)*
520 E. 34th Ave. Suite 102
Anchorage, Alaska 99503

4b. Tel. No. 907-751-8557
4c. Cell No. 907-575-6525
4d. Fax No. 907-751-8595
4e. e-Mail jmarton@akteamsters.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
International Brotherhood of Teamsters, Local 959

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ John Marton
(Signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 520 E. 34th Ave., Suite 102, Anchorage, AK 99503 2/28/2019 *(date)*

Tel. No. 907-751-8557
Office, if any, Cell No. 907-575-6525
Fax No. 907-751-8595
e-Mail jmarton@akteamsters.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation proceeding in Case 19-RD-216636. It has filed an unfair labor practice charge in Case (Copy of charge attached) and hereby requests that the petition be blocked by this charge.

(Name of Requesting Party)

(Case Number)

(Case Number)

Signature

03/06/2019
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Apple Bus Company

b. Tel. No. (816) 618-3310
c. Cell No. (269) 830-6176
f. Fax No. (816) 618-3303

d. Address *(Street, city, state, and ZIP code)*
230 E. Main Street
Cleveland, MO 64734
(work location: 34234 Industrial Street, Soldotna, AK 99669)

e. Employer Representative
Stephanie Teters

g. e-Mail
Stephanie.teters@applebuscompany.com

h. Number of workers employed
approximately 120

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Public school bus contractor

j. Identify principal product or service
Pupil Transportation

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Within the last six (6) months, the Company has failed to bargain in good faith with the Union by having a negotiator representing it at the bargaining table without the authority to reach an agreement with the Union.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Brotherhood of Teamsters, Local 959

4a. Address *(Street and number, city, state, and ZIP code)*
520 E. 34th Ave. Suite 102
Anchorage, Alaska 99503

4b. Tel. No. 907-751-8557
4c. Cell No. 907-575-6525
4d. Fax No. 907-751-8595
4e. e-Mail
jmarton@akteamsters.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
International Brotherhood of Teamsters, Local 959

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By *(signature of representative or person making charge)* John Marton *(Print/type name and title or office, if any)*

Address 520 E. 34th Ave., Suite 102, Anchorage, AK 99503

2/27/2019 *(date)*

Tel. No. 907-751-8557
Office, if any, Cell No. 907-575-6525
Fax No. 907-751-8595
e-Mail
jmarton@akteamsters.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

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FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636. It has filed an unfair labor practice
(Case Number)

charge in Case (copy of charge attached) and hereby requests that the petition be blocked by this charge.
(Case Number)

Signature

03/29/2019
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

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Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

(Continue on additional pages as necessary)

INTERNET FORM NLRB-501 (2-08)

FORM EXEMPT UNDER 44 U.S.C 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Apple Bus Company

b. Tel. No. (816) 618-3310

c. Cell No. (269) 830-6176

f. Fax No. (816) 618-3303

g. e-Mail

d. Address *(Street, city, state, and ZIP code)*
230 E. Main Street
Cleveland, MO 64734
(work location: 34234 Industrial Street, Soldotna, AK 99669)

e. Employer Representative
Stephanie Teters

h. Number of workers employed
approximately 120

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Public school bus contractor

j. Identify principal product or service
Pupil Transportation

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5)
of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Within the last six (6) months, the Company has refused to bargain or to even to meet with the Union once it canceled negotiations meetings that were scheduled with Union for March 26 through 28, 2019 in Soldotna, Alaska. The Company notified the Union on Friday, 3/22/19 that it was canceling these negotiations meetings. The Company's position is now that it recognizes the Union as the bargaining unit employees' representative, but it will not negotiate with the Union.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Brotherhood of Teamsters, Local 959

4a. Address *(Street and number, city, state, and ZIP code)*
520 E. 34th Ave. Suite 102
Anchorage, Alaska 99503

4b. Tel. No. 907-751-8557

4c. Cell No. 907-575-6525

4d. Fax No. 907-751-8595

4e. e-Mail
jmarton@akteamsters.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
International Brotherhood of Teamsters, Local 959

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ John Marton
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 520 E. 34th Ave., Suite 102, Anchorage, AK 99503 3/28/2019
(date)

Tel. No. 907-751-8557

Office, if any, Cell No. 907-575-6525

Fax No. 907-751-8595

e-Mail
jmarton@akteamsters.com

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PRIVACY ACT STATEMENT

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FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636 (Case Number). It has filed an unfair labor practice

charge in Case 19-CA-227800 (Case Number) and hereby requests that the petition be blocked by this charge.

Signature

09/25/2018
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

FORM NLRB-5548
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation proceeding in Case 19-RD-216636. It has filed an unfair labor practice charge in Case 19-CA-227810 and hereby requests that the petition be blocked by this charge.

(Name of Requesting Party) (Case Number) (Case Number)

Signature

09/25/2018
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636 . It has filed an unfair labor practice
(Case Number)

charge in Case 19-CA-227811 and hereby requests that the petition be blocked by this charge.
(Case Number)

Signature

09/25/2018
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:
(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

[redacted]

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

[redacted]

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

[redacted]

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

Resent with full attachment

FORM NLRB-5046
(4-19)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216616 . It has filed an unfair labor practice
(Case Number)

charge in Case (copy of charge attached) and hereby requests that the petition be blocked by this charge.
(Case Number)

John Marsh
Signature

06/08/2019
Date

John Marsh Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

(Continue on additional pages as necessary)

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
19-CA-242952	6-7-2019

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Apple Bus Company

b. Tel. No. (816) 618-3310

c. Cell No. (269) 830-6176

f. Fax No. (816) 618-3303

d. Address *(Street, city, state, and ZIP code)*
230 E. Main Street
Cleveland, MO 64734
(work location: 34234 Industrial Street, Soldotna, AK 99669)

e. Employer Representative
Stephanie Teters

g. e-Mail
Stephanie.teters@applebuscompany.com

h. Number of workers employed
approximately 120

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Public school bus contractor

j. Identify principal product or service
Pupil Transportation

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Within the last six (6) months, the Company has interfered with the Union and engaged in actions that has a chilling effect on employees' exercise of their right to collective bargaining when the Union Business Rep had a site visit at Apple Bus' Homer location on 3/28/2019. He was there from 4 pm until 5:40pm visiting with employees that were off the clock. About 5:30pm (b) (6), (b) (7)(C) informed Holan that [redacted] was not interested in paying dues and that (b) (6), (b) (7)(C) [redacted]. Holan informed [redacted] about dues, Beck rights and religious objector status. Holan started to tell [redacted] about the Union's dues structure and how the dues are calculated based on hours, hourly rates of pay, etc. At that time (b) (6), (b) (7)(C) came out of [redacted] office with an elevated voice telling Holan that [redacted] needed to leave if he was going to be recruiting. (Continued on attached page)

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Brotherhood of Teamsters, Local 959

4a. Address *(Street and number, city, state, and ZIP code)*
520 E. 34th Ave. Suite 102
Anchorage, Alaska 99503

4b. Tel. No. 907-751-8557

4c. Cell No.

4d. Fax No. 907-751-8595

4e. e-Mail
jmarton@akteamsters.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
International Brotherhood of Teamsters, Local 959

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By John Marton
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 520 E. 34th Ave., Suite 102, Anchorage, AK 99503

6/7/2019
(date)

Tel. No. 907-751-8557

Office, if any, Cell No.

Fax No. 907-751-8595

e-Mail
jmarton@akteamsters.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Continued from Item #2 (Basis of Charge).

Holan informed [redacted] that he was answering a question that was asked of him by a member and [redacted] just violated the NLRA for surveillance and interference with the Union and its members. Holan was not "recruiting". The member that Holan was responding in order to answer the questions he had about dues immediately left because of [redacted] interference.

FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216616. It has filed an unfair labor practice
(Case Number)

charge in Case (copy of charge attached) and hereby requests that the petition be blocked by this charge.
(Case Number)

John Marton 06/08/2019
Signature Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

Witness Name: _____

Summary of Testimony:

(Continue on additional pages as necessary)

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
19-CA-242905	6-6-2019

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Apple Bus Company

b. Tel. No. (816) 618-3310
c. Cell No. (269) 830-6176
f. Fax No. (816) 618-3303
g. e-Mail
h. Number of workers employed approximately 120

d. Address *(Street, city, state, and ZIP code)*
230 E. Main Street
Cleveland, MO 64734
(work location: 34234 Industrial Street, Soldotna, AK 99669)

e. Employer Representative
Stephanie Teters

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Public school bus contractor

j. Identify principal product or service
Pupil Transportation

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Within the last six (6) months, the Company has failed to bargain in good faith with the Union by its failure to provide information requested by the Union during the course of contract negotiations. The information requested is necessary for the Union to continue to bargain for a new cba with Apple Bus Co. The Union has repeatedly asked for a copy of the revenue contract between Apple Bus and the Kenai Peninsula Borough School District (KPBSD). That revenue contract between Apple Bus Co. and the KPBSD impacts and affects how Apple Bus is to treat its employees who are assigned to work on any KPBSD work. This is an ongoing problem, although the most recent requests made by the Union was at the bargaining meetings held the week of May 13, 2019 in Soldotna.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Brotherhood of Teamsters, Local 959

4a. Address *(Street and number, city, state, and ZIP code)*
520 E. 34th Ave. Suite 102
Anchorage, Alaska 99503

4b. Tel. No. 907-751-8557
4c. Cell No.
4d. Fax No. 907-751-8595
4e. e-Mail
jmarton@akteamsters.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
International Brotherhood of Teamsters, Local 959

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ John Marton
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 520 E. 34th Ave., Suite 102, Anchorage, AK 99503 6/6/2019 *(date)*

Tel. No. 907-751-8557
Office, if any, Cell No.
Fax No. 907-751-8595
e-Mail
jmarton@akteamsters.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216616 (Case Number). It has filed an unfair labor practice

charge in Case (copy of charge attached) (Case Number) and hereby requests that the petition be blocked by this charge.

Signature

06/08/2019
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

Witness Name:

Summary of Testimony:

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case	Date Filed
19 CA-242954	6-7-2019

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Apple Bus Company

b. Tel. No. (816) 618-3310
c. Cell No. (269) 830-6176
f. Fax No. (816) 618-3303
g. e-Mail Stephanie.Teters@applebuscompany.com
h. Number of workers employed approximately 120

d. Address *(Street, city, state, and ZIP code)*
230 E. Main Street
Cleveland, MO 64734
(work location: 34234 Industrial Street, Soldotna, AK 99669)

e. Employer Representative
Stephanie Teters

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Public school bus contractor

j. Identify principal product or service
Pupil Transportation

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
Within the last six (6) months, the Company has failed to bargain in good faith with the Union by continuing to engage in surface bargaining and delay tactics, especially as evidenced at the bargaining table during the weeks of February 25 and April 8, 2019. This is an ongoing and continuing problem.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Brotherhood of Teamsters, Local 959

4a. Address *(Street and number, city, state, and ZIP code)*
520 E. 34th Ave. Suite 102
Anchorage, Alaska 99503

4b. Tel. No. 907-751-8557
4c. Cell No. 907-575-6525
4d. Fax No. 907-751-8595
4e. e-Mail jmarton@akteamsters.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
International Brotherhood of Teamsters, Local 959

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By John Marton
(Signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 520 E. 34th Ave., Suite 102, Anchorage, AK 99503 6/7/2019 *(date)*

Tel. No. 907-751-8557
Office, if any, Cell No. 907-575-6525
Fax No. 907-751-8595
e-Mail jmarton@akteamsters.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Agency Website: www.nlrb.gov
Telephone: (206)220-6300
Fax: (206)220-6305

July 9, 2019

Amanda K. Freeman, Staff Attorney
National Right to Work Legal Defense Foundation
8001 Braddock Rd., Suite 600
Springfield, VA 22151-2115

Glenn M. Taubman
National Right to Work Legal Defense Foundation
8001 Braddock Rd., Suite 600
Springfield, VA 22160

Re: Apple Bus Company
Case 19-RD-216636

Dear Ms. Freeman and Mr. Taubman:

This is to notify you that the petition in the above-captioned case will continue to be held in abeyance pending the investigation and disposition of recently filed unfair labor practice charges. As you are aware, the petition is currently blocked pending compliance with the settlement in Cases 19-CA-230002 et al.[1] While the notice posting period has expired, the Region is continuing to monitor compliance for a reasonable period time (see Compliance Manual Section 10528.4 Bargaining Obligations Monitored for a Reasonable Period of Time). The Board has denied requests for review of the Region's decision to block the petition pending the disposition of these cases.

On March 28, 2019, the Union filed a charge in Case 19-CA-238757. Thereafter, the Region found merit to the allegation that the Employer violated Section 8(a)(5) of the Act by unilaterally rescinding the agreement it negotiated with the Union regarding visitation to the Employer's facilities, including by changing the agreement to require the Union to provide a reason and time-frame for the visit, and by refusing visitation despite the Union having provided the 24-hours e-mailed notice required under the agreement. As this allegation could interfere with employee free choice in an election, were one to be conducted, the Region granted the Charging Party's request to block on about May 2, 2019. The parties' informal settlement agreement resolving this case was approved on about May 14, 2019. Accordingly, the Region cannot process the petition further until final disposition of the charge (See Representation Casehandling Manual Section 11730.2).

On June 6, 2019, the Union filed a charge in Case 19-CA-242905 alleging the Employer violated Section 8(a)(5) of the Act by failing to provide the Union with the revenue contract between Apple Bus and the Kenai Peninsula School District where bargaining unit employees work. Also on June 6, 2019, the Union filed a charge in Case 19-CA-242879, alleging the

[1] The complete list of cases included in the settlement are: 19-CA-230002, 19-CA-229797, 228939, 229782, 227811, 227810, 222050, 221066, 218290, and 212813.

Employer dealt directly with employees regarding bargaining proposals. On June 7, 2019, the Union filed a charge in Case 19-CA-242952 alleging the Employer interfered, restrained, chilled, and surveilled employees in the exercise of their Section 7 rights when it informed the Union representative that he had to leave the premises. Also on June 7, 2019, the Union filed a charge in Case 19-CA-242954 alleging the Employer engaged in surface bargaining. The Union filed blocking requests in each case. If found to be meritorious, these charges could interfere with employee free choice in an election, were one to be conducted. As such, the Region granted the Charging Party's' requests to block and cannot process the petition further until final disposition of these charges (See Representation Casehandling Manual Section 11730.2).

Right to Request Review: Pursuant to Section 102.71 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review shall be submitted in eight copies, unless filed electronically, with a copy filed with the regional director, and all copies must be served on all the other parties. The request must contain a complete statement setting forth facts and reasons upon which the request is based.

***Procedures for Filing Request for Review*:** A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time)** on **Friday, 19 July 2019**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on **Tuesday, 23 July 2019**.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

The Board may grant special permission an extention of time within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has

been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

RK Hooks

RONALD K. HOOKS
Regional Director

cc: Office of the Executive Secretary (by e-mail)

John Eberhart, General Counsel
Teamsters Local 959
520 East 34th Ave Ste 102
Anchorage, AK 99503-4164

Elizabeth J. Chase
PO Box 39
Kasilof, AK 99610-9303

Julie Cisco, General Manager-Alaska
Apple Bus Company
34234 Industrial St
Soldotna, AK 99669-8325

Terrence W. Kilroy, Attorney
Polsinelli, PC
900 W 48th Pl Ste 900
Kansas City, MO 64112-1899

Confirmation Number	1000286822
Date Submitted	7/15/2019 5:18:58 PM (UTC-05:00) Eastern Time (US & Canada)
Case Name	Apple Bus Company
Case Number	19-RD-216636
Filing Party	Petitioner
Name	Freeman, Amanda
Email	akf@nrtw.org
Address	8001 Braddock Road Springfield, VA 22151
Telephone	7033218510
Fax	
Original Due Date	7/23/2019
Date Requested	8/2/2019
Reason for Extension of Time	On, or about, July 10, 2019 we received notice that the Region once again blocked Petitioner's decertification election and the basis for such decision. Due to previously-scheduled court requirements and vacations, Petitioner's undersigned counsel requests a brief ten day extension of time to August 2, 2019 to properly research and brief the issues involved in this Request for Review. This is the first and only request for an extension of time that is contemplated.
What Document is Due	RFR of Decision to block based on ULP
Parties Served	Regional Director Hooks Region 19 915 2nd Ave., Ste. 2948 Seattle, WA 98174-1006 ronald.hooks@nlrb.gov John Eberhart Teamsters local 959 520 East 34th Ave, Ste. 102 Anchorage, AK 99503-4164 JEberhart@akteamsters.com Terrence W. Kilroy, Attorney Polsinelli, PC 900 W 48th Pl, Ste. 900 Kansas City, MO 64112-1899 TKilroy@Polsinelli.com

United States Government

OFFICE OF THE EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
1015 HALF STREET SE
WASHINGTON, DC 20570

July 19, 2019

Re: Apple Bus Company
Case 19-RD-216636

EXTENSION OF TIME TO FILE REQUEST FOR REVIEW

The request for an extension of time in the above-referenced case is granted. The due date for the receipt in Washington, D.C. of Requests for Review of the Regional Director's Decision to block the Employer's petition is extended to **August 2, 2019**. This extension of time to file requests for review applies to all parties.

/s/ Diane Bridge
Counsel

cc: Parties
Region

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Apple Bus Company,
Employer,

Case No. 19-RD-216636

and

General Teamsters Local 959,
Union,

and

Elizabeth Chase,
Petitioner.

PETITIONER'S FOURTH REQUEST FOR REVIEW

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Petitioner Elizabeth Chase ("Petitioner" or "Chase") requests review of the Regional Director's July 9, 2019 election block, Petitioner's *fourth* request for review since March 2018. NLRB Rules & Regs. §§ 102.67 and 102.71; Ex. A, Reg'l Director's Letter Holding in Abeyance, *Apple Bus Co.*, Case No. 19-RD-216636 (July 9, 2019). Not surprisingly, General Teamsters Local 959's ("Teamsters") latest wave of unfair labor practice charges ("ULP") and the Region's automatic abeyance comes right on the cusp of a decertification election being a possibility for this bargaining unit—a unit that has waited since July 2017 to exercise its NLRA Sections 7 and 9 rights. 29 U.S.C. §§ 157 and 159.

Despite the Act's purpose, the current "blocking charge" rules continue to have significant negative consequences on employees' rights to express their views about representation. As several Board members have noted multiple times, cases that halt employee decertification elections raise "compelling reasons for reconsideration of [a] . . . Board rule or policy." NLRB Rules & Regs. §§ 102.71(b)(1), (2).[1] Chase urges the Board to re-evaluate its continued allowance of "blocking charges" to prevent her decertification election. This is the quintessential case for the Board to re-evaluate the blocking charge rules and determine how long this madness will continue.

[1] S*ee Heavy Materials, LLC-St. Croix Div.*, 12-RM-231582 (Order of May 30, 2019), https://apps.nlrb.gov/link/document.aspx/09031d4582c2b074 (Members Kaplan and Emanuel noting they "would consider revisiting the Board's blocking charge policy in a future appropriate proceeding"); *UFCW Local 951*, 07-RD-228723 (Order of April 25, 2019), http://apps nlrb.gov/link/document.aspx/09031d4582bbf45f (Chairmen Ring and Member Emanuel noting the same); *Columbia Sussex*, 19-RD-223516 (Order of Sept. 12, 2018), http://apps.nl rb.gov/link/document.aspx/09031d458291a8cf (Chairmen Ring and Member Kaplan noting the same); *Klockner Metals Corp.*, 15-RD-217981 (Order of May 17, 2018), http://apps.nlrb.gov/link/document.aspx/09031d45827eafd2 (Member Kaplan noting the same and also stating that "he believes an employee's petition for an election should generally not be dismissed or held in abeyance based on contested and unproven allegations of unfair labor practices"); *see, e.g., Pinnacle Foods Grp., LLC,* No. 14-RD-226626, 2019 WL 656304, at *1 (Order of Feb. 4, 2019) (Chairmen Ring and Member Kaplan noting the suspect timing of ULP blocking charges suggests a purpose to delay a decertification election, and supports revisiting "the blocking charge policy in a future rulemaking proceeding"); *Metro Ambulance Servs.*, 10-RC-208221 (Order of July 17, 2018) (Chairman Ring and Member Emanuel stating there are "significant issues with the Board's Election Rule and the law pertaining to blocking charges that potentially frustrate the rights of employees, and they believe the policy should be reconsidered").

FACTS

Apple Bus Company ("Apple Bus") supplanted First Student and became Chase and her fellow employees' employer on July 1, 2017. Ex. B, Reg'l Director's Dec. & Order at *2, *Apple Bus Co.*, Case No. 19-RD-203378 (Aug. 28, 2017), Request for Review denied, 2017 WL 6403493 (Dec. 14, 2017). Apple Bus did so under a contract it obtained with the Kenai Peninsula Borough School District ("School District") on October 20, 2016 to provide school bus transportation services in Alaska.[2] *Id.* Since Apple Bus knew it was going to, and did, hire a majority of the previous bargaining unit, Apple Bus and Teamsters first met on February 24, 2017 to begin negotiations on a new collective bargaining agreement. *Id.* at *2–*3. They have continued to negotiate by telephone and in person since then, *id.*, and reached a tentative agreement on or about July 17, 2019, awaiting only ratification by those the Union permits to ratify it.[3]

A. Petitioner's decertification petitions.

Chase filed her first decertification petition on July 31, 2017. Case No. 19-RD-203378; Ex. B, at *3. At Teamsters's behest, the Regional Director dismissed this petition as "premature" one month later based on the "successor bar" doctrine, Ex. B, at *3–*5, and the Board denied Petitioner's request for review, *see* 2017 WL 6403493 (Dec. 14, 2017).[4]

Having waited for the successor bar's expiration, Chase presented a majority decertification petition to Apple Bus on February 26, 2018. Chase asked Apple Bus to withdraw

[2] Under a prior contract with the School District, First Student, Inc. had been the previous employer at various times from 2008 until midnight on June 30, 2017. Ex. B, at *1.

[3] *See In Re W. Co. & United Steelworkers of Am., AFL-CIO*, 333 NLRB 1314, 1317 (2001) (noting "it is for the Union to construe and apply its internal regulations relating to what would be sufficient to amount to ratification"); *see also Childers Prods. Co.*, 276 NLRB 709, 711 (1985), *review denied mem.* 791 F.2d 915 (3d Cir. 1986); *Houchens Mkt. of Elizabethtown, Inc. v. NLRB*, 375 F.2d 208, 212 (6th Cir. 1967); *Martin J. Barry Co.*, 241 NLRB 1011, 1013 (1979).

[4] The "successor bar" established in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), is no longer at issue because that bar expired on February 24, 2018. Ex. B, at *4 (noting when the successor bar began), *Apple Bus Co.*, Case No. 19-RD-203378 (Aug. 28, 2017), Request for Review denied, 2017 WL 6403493 (Dec. 14, 2017).

recognition and cease bargaining with Teamsters pursuant to *Dura Art Stone, Inc.*, 346 NLRB 149 (2005). Because Apple Bus refused to withdraw recognition of the minority union,[5] Chase was forced to file this case on March 15, 2018, her *second* decertification petition supported by a majority "showing of interest." Rather than processing Chase's second petition, the Region has permitted Teamsters successfully to file calculated blocking charges with no election in sight, despite completion of settlements addressing and resolving the old outstanding charges and one of the new charges. *See* Ex. A (stating the Region "is continuing to monitor compliance for a reasonable period of time" despite Apple Bus's compliance with the notice posting requirements).

B. Teamsters files blocking charges right before the successor bar's expiration.

Faced with the successor bar's February 24, 2018 expiration and its lack of majority support, Teamsters strategically filed its first wave of ULP's—"blocking charges"—against Apple Bus. Teamsters filed four in January, Exs. C–F (Case Nos. 19-CA-212764, 19-CA-212776, 19-CA-212798, 19-CA-212813 (all filed Jan. 5, 2018)), and one eleven days before the bar's expiration, Ex. G (Case No. 19-CA-214770 (Feb. 13, 2018)). In these charges, Teamsters alleged Apple Bus refused to furnish information, unilaterally modified the contract, and refused to bargain—all allegations Teamsters knew would prompt the Region precisely to do what it did here, despite the employees' lack of knowledge or awareness of the alleged conduct.

The Regional Director halted this second decertification election effort at Teamsters's behest on March 20, 2018 based on these five blocking charges. Ex. H, Order Postponing Hearing Indefinitely, *Apple Bus Co.*, Case No. 19-RD-216636 (Mar. 20, 2018). It did so without

[5] Chase filed a ULP against Apple Bus for continuing to bargain with a minority union. Case No. 19-CA-216719 (filed Mar. 16, 2018). On September 7, 2018, Chase appealed the Region's August 15 dismissal of her charge to the General Counsel. Docket Activity, https://www nlrb.gov/case/19-CA-216719. After first sustaining Chase's appeal in part on March 15, 2019, the Office of Appeals revoked the letter sustaining it and denied the entire appeal on April 2, 2019. *Id.*

holding a hearing, making a determination about the five blocking charges' legitimacy, or ordering Teamsters to prove a "causal nexus" between the alleged Apple Bus infractions and the employees' desire to be rid of Teamsters. Petitioner filed a Request for Review ("First Request for Review") of this decision eight days later, challenging the "blocking charge" rule.

Not willing to stop with just five contested charges, Teamsters filed two more ULPs in April alleging Apple Bus bargained in bad faith and illegally allowed and assisted in the employees' decertification efforts. Exs. I–J, Charges Against Employer, Case Nos. 19-CA-212890 (Apr. 9, 2018), 19-CA-218755 (Apr. 18, 2018). In the latter ULP, Teamsters claimed Chase and other employees, with the company's support, used company time to decertify Teamsters. Ex. J. Despite the ULP charge's lack of veracity, the Region never solicited Chase for an affidavit to address the Apple Bus taint allegation.

While the First Request for Review was pending, the Regional Director again held the second decertification election in abeyance based on these two additional unproven and contested ULP charges. Ex. K, Reg'l Director's Letter Holding in Abeyance, *Apple Bus Co.*, Case No. 19-RD-216636 (May 2, 2018). The Regional Director did so without holding a hearing, determining the blocking charges' legitimacy, or ordering Teamsters to prove a "causal nexus" between the alleged Apple Bus infractions and the employees' decertification petition.

On May 9, 2018, the Board denied Petitioner's First Request for Review with two Members' stating they favored revisiting or reconsidering the Board's blocking charge policy. Ex. L, Order, *Apple Bus Co.*, Case No. 19-RD-216636, 2017 WL 6403493, *1 n.1 (May 9, 2018).[6] Only after it successfully had blocked the election and the Board had denied Petitioner's

[6] Member Emanuel stated "an employee's petition for an election should generally not be dismissed or held in abeyance based on contested and unproven allegations of unfair labor practices," and Member Kaplan stated he would reconsider the issue in "a future appropriate case." Ex. L, Order, *Apple Bus Co.*, No. 19-RD-216636, 2017 WL 6403493, *1 n.1 (May 9, 2018).

First Request for Review did Teamsters withdraw all but one of its initial five charges.[7] As to the remaining fifth charge, the Region has never issued a complaint, and that charge's allegations are part of a February 28, 2019 settlement that will be discussed below. *See infra* Section C.

Despite the loss of her First Request for Review, Chase filed her Second Request for Review on May 15, 2018, this time of the Regional Director's May 2, 2018 decision, again challenging the "blocking charge" rule. A month later, Teamsters continued its blocking efforts by filing a charge on June 12, claiming almost three months after the fact that Apple Bus unjustifiably terminated Toni Knight ("Knight") only because she is a known "strong union supporter." Ex. M, Charge Against Employer, Case No. 19-CA-222039 (June 12, 2018). Without stating the facts surrounding Knight's termination, Teamsters claims Apple Bus has a double standard, preferring non-members to Teamsters members. *Id*. This new ULP charge baldly alleges Apple Bus terminated Knight for engaging in allegedly prohibited conduct while it continues to employ Chase, who Teamsters claims had engaged in identical prohibited conduct. *Id*. Chase, however, has not committed the same violation—leaving school children unattended on the school bus while it was running, nor can Teamsters establish otherwise. Ex. N, Chase Decl., ¶ 11 (originally attached to Third Request for Review).

While Petitioner's Second Request for Review was still pending, the Regional Director held the decertification election in abeyance again until the June 12 charge is resolved. Ex. O, Reg'l Director's Letter Holding in Abeyance, *Apple Bus Co.*, Case No. 19-RD-216636 (July 9, 2018). As with his other decisions, the Regional Director issued his third abeyance order without

[7] The Region approved Teamsters's withdrawal of Case Nos. 19-CA-212776, 19-CA-212798, and 19-CA-214770 on June 28, 2018. *See* Docket Activity, https://www.nlrb.gov/case/19-CA-212776; Docket Activity, https://www.nlrb.gov/case/19-CA-212798; Docket Activity, https://www.nlrb.gov/case/19-CA-214770. The Region then approved Teamsters's withdrawal of Case No. 19-CA-212764 on August 7, 2018. *See* Docket Activity, https://www.nlrb.gov/case/19-CA-212764.

Case No. 19-CA-212813 was part of a February 28, 2019 unilateral formal settlement agreement settling it and nine other charges (eight that are irrelevant here), which was approved that same day and fully complied with. Ex. A, at *1, *1 n.1.

holding a hearing, determining the blocking charge's legitimacy, or ordering Teamsters to prove a "causal nexus" between the alleged infraction and the decertification petition. The Region never even bothered to obtain an affidavit from Chase to determine whether Teamsters's assertions that she also had committed a violation has any factual basis, which it would be unable to establish. That same day, Teamsters filed a ULP charge asserting Apple Bus failed to provide information Teamsters requested. Ex. P, Charge against Employer, Case No. 19-CA-223071 (June 29, 2018).

On July 23, 2018, Petitioner filed a Request for Review ("Third Request for Review") of the Regional Director's July 9 abeyance decision, again challenging the "blocking charge" rule.

Two things then took place on August 2, 2018. The Board denied Petitioner's Second and Third Requests for Review with two Members noting they did so for institutional reasons, but that "they would consider revisiting the Board's blocking charge policy in a future appropriate proceeding." Ex. Q, Order, *Apple Bus Co.*, Case No. 19-RD-216636, 2018 WL 3703490, *1 n.1 (Aug. 2, 2018). That same day, the Region held Petitioner's decertification election in abeyance pending Teamsters's contested July 9 charge, without holding a hearing, making a threshold determination about the blocking charge's legitimacy, or ordering Teamsters to prove a "causal nexus" between the alleged Apple Bus infraction and the decertification petition. Ex. R, Email notifying of Reg'l Director's Decision Holding in Abeyance, *Apple Bus Co.*, Case No. 19-RD-223071 (Aug. 2, 2018).

Then, Teamsters withdrew one of its April charges (Ex. J), its June charge (Ex. M), and its July charge (Ex. P)—waiting to do so until after the Board's July 23, 2018 denial of Petitioner's Second and Third Requests for Review. *Compare* Docket Activity, https://www.nlrb.gov/case/19-CA-218755 (approving withdrawal on Sept. 28, 2018),

https://www.nlrb.gov/case/19-CA-222039 (approving withdrawal on Oct. 1, 2018), and Docket Activity, https://www.nlrb.gov/case/19-CA-223071 (approving withdrawal on Sept. 28, 2018) *with* Ex. Q (denying Second and Third Requests for Review). As for the remaining April ULP charge (Ex. I), the Region has never issued a complaint, and the allegations in that charge are part of the February 28, 2019 settlement that will be discussed below. *See infra* Section C.

C. Settlement of the two initial outstanding charges blocking the election.

Having withdrawn seven of its initial nine blocking charges, Teamsters only had two outstanding claims against Apple Bus blocking the March 15, 2018 decertification petition. The first claim is that Apple Bus failed to bargain in good faith by not meeting at reasonable times and dates. Ex. F (Case No. 19-CA-212813). The second claim is that Apple Bus also failed to bargain in good faith by surface bargaining based on Teamsters's view that Apple Bus, among a long list, failed to meet frequently enough, failed to reach a certain number of tentative agreements, took long caucuses, refused to bargain over a Teamsters security clause, and failed to provide documents Teamsters claims are necessary. Ex. I (Case No. 19-CA-218290).

Apple Bus and the Board reached a settlement ("First Settlement") on, or about, February 28, 2019 resolving the two remaining charges. Ex. S.[8] The First Settlement included a non-admissions clause stating Apple Bus was not admitting it had violated the law. Ex. S. Under that settlement, Apple Bus posted a notice on, or about, April 1, 2019, which the Region acknowledged it kept posted for the requisite sixty days. *See* Ex. A (stating the notice posting period had expired). With the First Settlement complete, Chase and the bargaining unit's hope for a decertification election, a hope they have nurtured since July 31, 2017, was near, or so they thought.

[8] Teamsters appears at first to have appealed this settlement on March 19, 2019, but then withdrew it seven days later. *See* Docket Activity, https://www.nlrb.gov/case/19-CA-212813.

D. Settlement of a new charge.

Confronted with its two remaining blocking charges resolution and with an election again in sight, Teamsters filed a new blocking charge on March 28, 2019—nine months after its last blocking charge. Ex. T, Charge Against Employer, Case No. 19-CA-238757 (Mar. 28, 2019). In this new charge, Teamsters claimed Apple Bus interfered with a Teamsters representative's access to both the property and employees. Ex. T. Before Chase even knew that this new charge was blocking her election,[9] Teamsters and Apple Bus entered into a Board settlement ("Second Settlement") on, or about, May 14, 2019 resolving it. Ex. U; *see also* Docket Activity, https://www.nlrb.gov/case/19-CA-238757. This settlement also included a non-admissions clause for Apple Bus. Ex. U. In accordance with the settlement, Apple Bus physically posted the notice on May 29 and 30, with the sixty-day posting having expired on, or about, July 30, 2019.

E. Teamsters filed blocking charges just before a possible August 2019 decertification election.

Again realizing an actual election was near and waiting months after several of the alleged violations had occurred, Teamsters filed four additional blocking charges against Apple Bus, two on June 6, 2019, Exs. V–W, Charges Against Employer, Case Nos. 19-CA-242905, 19-CA-242879, and two on June 7, 2019, Exs. X–Y, Charges Against Employer, Case Nos. 19-CA-242952, 19-CA-242954. In those ULP charges, Teamsters claimed Apple Bus 1) failed to bargain in good faith by not providing Teamsters with a copy of the revenue contract between Apple Bus and Kenai Peninsula, Ex. V; 2) improperly directed employees to talk to the employer, in addition to a Teamsters representative, about "bargaining proposals" through a May 21, 2019 flyer on a bulletin board, Ex. W; 3) interfered, chilled, and surveilled a union representative by asking him to leave if he was recruiting during a March 28, 2019 conversation

[9] The Regional Director notified Chase of this new blocking charge in its July 9, 2019 letter. Ex. A.

he was having with a non-union member who already had indicated to that representative his lack of desire to pay union dues, Ex. X; and 4) engaged in surface bargaining during the weeks of February 25 and April 8, 2019, Ex. Y.

Rather than holding a hearing, determining the blocking charges' legitimacy, or ordering Teamsters to prove a "causal nexus" between the alleged conduct and the decertification petition, the Regional Director issued his predictable sixth abeyance order. Ex. A. In addition, the Regional Director stated that despite the first two outstanding charges' resolution through the First Settlement, including compliance with the notice posting, he was "continuing to monitor compliance for a reasonable period [sic] time."[10] The Regional Director also stated the Region could not process the petition pending "final disposition of the charge" that was the Second Settlement's basis.

Chase now appeals this newest blocking charge abeyance decision, which conflicts with her Sections 7 and 9 rights. Chase also asks how long can a Region allow Teamsters strategically to block her election? Finally, she asks how long can the Region itself block the election by gratuitously "monitoring" settlements that already have been resolved? Such actions defy Chase's and the bargaining unit's rights years after they filed their first decertification petition, and highlight the maxim that "justice delayed is justice denied."

ARGUMENT

The National Labor Relations Act gives employees the right to choose or reject a union's representation. The Board, in turn, exists to conduct elections and thereby vindicate employees'

[10] Under the NLRB's Casehandling Manual, a Region should process a petition once a settlement is reached for an alleged but unproven unfair labor practice, the respondent does not admit liability as part of that settlement, and the petition is not withdrawn. NLRB Casehandling Manual (Part Two) Representation Proceeding Secs. 11733.2(a)(1); 11733.2(a)(2); 11733.2(a)(3). Because all three things occurred here, it is unclear why the Region is claiming it is still proper for it to continue to hold the petition in abeyance. *See Cablevision Sys. Corp*., 367 NLRB No. 59, 2018 WL 6722907, *3 (2018) (affirming a Region must process a decertification election "'at the petitioner's request following the parties' settlement and resolution of the unfair labor practice charge'" (quoting *Truserv Corp.*, 349 NLRB 227, 227 (2007))).

rights to choose or reject that union representation.[11] Yet current practice and law does not protect an employee's right to obtain a decertification election upon request. Instead, NLRB Regional Directors arbitrarily suspend decertification elections under the "blocking charge" rule based on a union's unproven and contested ULP allegations. Such blocks occurring at the unilateral behest of a union that knows it will lose or already has lost the bargaining unit employees' support.

Following current practice, the Regional Director once again automatically blocked Petitioner's decertification election as soon as Teamsters filed its recent wave of five ULP charges. Ex. A. The Regional Director did so despite Teamsters's calculated withdrawal of seven out of its nine prior blocking charges. The "blocking charge" rules allow Teamsters to "game the system" and strategically delay Petitioner's *decertification* election, to the deprivation of Petitioner's and Apple Bus employees' fundamental Sections 7 and 9 rights. This conflicts with the Board's current policy of rushing all *certification* petitions to an election while prohibiting "blocks" under any circumstances. *See Representation-Case Procedures,* 79 Fed. Reg. 74308, 74430–74460 (Dec. 15, 2014).

Despite the unequal treatment of the two, the difference between certification and decertification is an artificial one. The Board should cease applying a double-standard, grant Chase's request for review, reverse the Regional Director's decision, order Petitioner's election processed, and follow former Chairman Miscimarra's urging to implement a wholesale revision of the "blocking charge" rules. *Cablevision Sys. Corp.*, Case 29-RD-138839, *1 n.1 (June 30,

[11] *See, e.g., Johnson Controls, Inc.*, 368 NLRB No. 20, 2019 WL 2893706, *8 (July 3, 2019) (holding "[a] Board-conducted secret-ballot election . . . is the preferred means of resolving questions concerning representation"); *Gen. Shoe Corp.*, 77 NLRB 124, 126 (1948) (holding the Board "sparingly" should exercise its power to set aside an election because it cannot "police the details surrounding every election" and the secrecy in Board elections empowers employees to express their true convictions).

2016) (Order Denying Review), *dismissal rev'd, rem'd for pet. processing*, 367 NLRB No. 59 (2018).[12]

In the alternative, the Board should require the Region, before it automatically applies the "blocking charge" policy, either 1) explain what causal connection(s) exists to permit it to block Petitioner's election, *see* NLRB Casehandling Manual (Part Two) Representation Proceeding Sec. 11730.4 [hereinafter Casehandling Manual]; 2) explain why it believes the employees cannot exercise their free choice in an election despite the new ULP charges, removing Exception 2's application, Casehandling Manual Sec. 11731.2; or 3) conduct a *Saint-Gobain* "causation" hearing as a precondition to blocking Petitioner's decertification election, s*ee Saint-Gobain Abrasives, Inc.*, 342 NLRB 434 (2004).

I. The Board should overrule or revamp its "blocking charge" policy.

Apple Bus took no actions that interfered with employee free choice despite Teamsters's multiple self-serving claims to the contrary. And even if Apple Bus committed the alleged violations, those violations did not affect the decertification petition filed thirteen and fifteen months before the latest blocking charges were even filed. *See, e.g., Tenneco Auto., Inc. v. NLRB*, 716 F.3d 640, 649–50 (D.C. Cir. 2013) (noting not all employer ULPs taint employees' decertification petition). Further, the employees' statutory right to petition for a decertification election should not be disregarded because Apple Bus allegedly acted unlawfully.

A. The Act exists to protect employees' rights.

NLRA Section 7 grants employees a statutory right to refrain from forming, joining, or assisting a labor organization. 29 U.S.C. § 157. Concomitant with that right to refrain, NLRA

[12] *See also Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 426 (4th Cir. 2001) (noting Section 7 "guards with equal jealousy employees' selection of the union of their choice and their decision not to be represented at all"); *Valley Hosp. Med. Ctr., Inc. & SEIU Local 1107*, 28-RD-192131, 2017 WL 2963204 (Order Denying Review, July 6, 2017); *see also Pinnacle Foods Grp., LLC*, No. 14-RD-226626, 2019 WL 656304, at *1 (Order of Feb. 4, 2019) (Chairmen Ring and Member Kaplan, concurring)

Section 9(c)(1)(A)(ii) grants employees a statutory right to petition for a decertification election subject only to the express statutory limitation preventing such an election from being held within twelve months of a previous election. 29 U.S.C. §§ 159(c)(1)(A) & (c)(3). Employees' Section 7 free choice right is the NLRA's paramount concern, and such right should not be denied based on Board created arbitrary rules, "bars," or "blocks." *Pattern Makers' League v. NLRB*, 473 U.S. 95, 104 (1985); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992) (noting Section 7 confers rights only on employees, not unions and their organizers); *see also Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) (noting employee free choice is the "core principle of the Act" (quotation marks and citation omitted)).

An NLRB conducted secret-ballot election is the preferred mechanism by which employees can exercise their free choice rights, whether for certification or decertification. *Johnson Controls, Inc.*, 368 NLRB No. 20, 2019 WL 2893706, *8. Such elections promote workplace peace by ensuring two things. First, the employees support the representative empowered to speak and act for them. Second, the exclusive representative is motivated to represent the employees well in all interactions with the employer. Yet the Board's "blocking charge" policy sacrifices the employees' free choice rights to an unpopular union's Machiavellian maneuvering.

B. The Board's "blocking charge" policy infringes on employees' rights.

Congress did not establish the Board's "blocking charge" practice. Rather, its creation and application lies within the Board's discretion to effectuate the Act's policies. *Am. Metal Prods. Co.*, 139 NLRB 601, 604–05 (1962); *see also* Casehandling Manual Secs. 11730 et seq. (detailing the "blocking charge" procedures). Rather than carry out the Act's purpose, the

"blocking charge" policy debilitates Petitioner's and other employees' statutory rights, as this long delayed election case demonstrates.

The Board's "blocking charge" policy operates under a system of "presumptions" that prevent employees from exercising their Sections 7 and 9(c)(1)(A)(ii) statutory rights. As a result, a union can stop any decertification election simply by filing a ULP charge against an employer, regardless of that charge's veracity. When a blocking charge is filed, the Regional Director invariably holds the decertification proceeding in abeyance, which precisely is what has happened six times in this case—despite Teamsters ultimately withdrawing seven out of its nine prior blocking charges. No matter how offensive the claimed ULP charges, the Region should process employees' decertification election once there is a showing of 30% interest, the ballots counted, and any challenges or objections sorted out later, just as with certification elections.

Here, the Regional Director's immediate application of the "blocking charge" policy ignored, and continues to ignore, Chase and her fellow employees' longstanding desire to exercise their right to be free from Teamsters's representation. By automatically blocking this election, the Regional Director continues to treat Petitioner and her fellow employees like children unable to make up their own minds, even though they have "stayed the course" since they filed their first decertification in July 2017. Even if Apple Bus committed the technical violations alleged in the recent five ULP charges, "[t]he wrongs of the parent should not be visited on the children, and the violations of [the employer] should not be visited on these employees." *Overnite Transp. Co.*, 333 NLRB 1392, 1398 (2001) (Member Hurtgen, dissenting).

The Board's "blocking charge" policy often denies decertification elections even when, as here, the employees may be unaware of the alleged employer misconduct, the alleged misconduct occurred more than a year after the decertification was filed, or the employees'

longstanding disaffection from the union springs from an independent source. Use of "presumptions" to halt decertification elections serves only to entrench unpopular incumbent unions, forcing an unwanted minority representative on employees. Judge Sentelle's concurrence in *Lee Lumber* highlights the inequitable nature of the Board's policies. 117 F.3d at 1463–64.

C. The Board should overhaul its "blocking charge" policy.

The Board should reevaluate its discretionary Board policies, such as the Board's "blocking charge" policy, when industrial conditions warrant. *See, e.g.*, *IBM Corp.*, 341 NLRB 1288, 1291 (2004) (holding the Board has a duty to adapt the Act to "changing patterns of industrial life" and the special function of applying the Act's general provisions to the "complexities of industrial life") (citation omitted)). Given that a prior Board majority decided to rush all certification petitions to fast elections and hold objections and challenges until afterwards, 79 Fed. Reg. 74308, the current Board should adopt a neutral and balanced policy that will treat decertification elections the same way, thereby further protecting employees' rights. It is time to apply the election rules equally to both certification and decertification elections. Indeed, the Board Chairman and several Board members have shown a desire to revisit the blocking charge rules. *See supra* n.1.

Fairness considerations aside, the Board's continued practice of delaying and denying only decertification elections based on blocking charges has faced severe judicial criticism. In *NLRB v. Minute Maid Corp.*, the Fifth Circuit stated:

> [T]he Board is [not] relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold otherwise would put the union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented.

283 F.2d 705, 710 (5th Cir. 1960).[13]

Here, the Board should take administrative notice of its own statistics, which establish the Board blocks around 30% of decertification petitions, while the Board *never* blocks certification elections for any reason. *See* NLRB, *Annual Review of Revised R-Case Rules*, https://www.nlrb.gov/sites/default/files/attachments/news-story/node-4680/R-Case%20Annual%20Review.pdf. Unlike decertification petition procedures, the Board conducts all certification elections first, counts the ballots, and settles any objections or challenges afterwards. If the Board can rush certification petitions to quick elections by holding all objections and challenges until afterwards, it can do the same for decertification petitions. It is time the Board replace its discriminatory "blocking charge" rules with a system that affords employees seeking decertification elections *the same rights* as employees seeking a certification election.

Petitioner also urges the Board to overrule or overhaul its "blocking charge" policies to protect the NLRA's true touchstone—*employees*' paramount Section 7 free choice rights. *Int'l Ladies Garment Workers v. NLRB*, 366 U.S. 731, 737 (1961) (holding "there could be no clearer abridgment of § 7" than for a union and employer to enter into a collective bargaining relationship when the union lacks a majority of employees support).

In short, the Board should order Region 19 to proceed to a secret-ballot election without further delay to allow Petitioner and her colleagues to make their own free choice about unionization. A choice they are well equipped to do and have been for over two years. The employees' paramount Section 7 and 9 rights are at stake, and the Board should not disregard

[13] *See also Scomas of Sausalito, LLC v. NLRB*, 849 F.3d 1147, 1159 (D.C. Cir. 2017) (criticizing use of blocking charges as a tactic for delay); *Surratt v. NLRB*, 463 F.2d 378 (5th Cir. 1972) (rejecting applying the blocking charge policy); *Templeton v. Dixie Printing Co.*, 444 F.2d 1064 (5th Cir. 1971) (same); *NLRB v. Gebhardt-Vogel Tanning Co.*, 389 F.2d 71, 75 (7th Cir. 1968) (quoting *Minute Maid Corp.*, 283 F.2d at 710); *T-Mobile USA Inc. v. NLRB*, 717 F. App'x 1, 4 (D.C. Cir. 2018) (Sentelle, J., dissenting) (noting the Board's blocking charge policy causes "unfair prejudice").

their rights because Apple Bus allegedly committed mistakes. This especially is true here, where a raft of Teamsters ULP charges have yielded not one formal complaint against Apple Bus, where Teamsters has withdrawn seven of its initially filed nine blocking charges, and where the Board and Apple Bus concluded two of the prior charges and one of the new charges, all by settlements with non-admissions clauses. *See, e.g.*, *Cablevision Sys. Corp.*, 367 NLRB No. 59, 2018 WL 6722907, *3 (holding a decertification election must be processed following settlement and resolution of ULP charges).

D. The current case continues to show the "blocking charge" policy's impingement on employees' rights.

The Regional Director's sixth automatic denial of Petitioner's and employees' Section 9(c)(1)(A)(ii) right to petition for a decertification highlights the current "blocking charge" policy's absurdity. Apple Bus perpetrated no "wrongs." Not only are Teamsters's newest charges self-serving, minor, and often baseless, they were filed to delay and postpone the decertification election rather than to advocate on behalf of wronged employees, making application of the "blocking charge" policy even worse. Despite majority support for decertification more than a year before the alleged misconduct occurred, the Region continues indefinitely to postpone an election proceeding based on the notion that some connection might exist between that petition and the allegedly unlawful employer conduct. Indeed, the actions here have permitted Teamsters to enter into a collective bargaining agreement almost fifteen months after it was shown to be a minority union. *Int'l Ladies' Garment Workers Union*, 366 U.S. at 737 (noting a union and employer engaging in collective bargaining when a majority of employees do not support union representation is a clear Section 7 abridgement).

Master Slack Corporation compels a determination that the ULP charges at issue should not block the election. 271 NLRB 78 (1984). To block an election, *Master Slack* demands a ULP

be "of a character as to either affect Teamsters's status, cause employee disaffection, or improperly affect the bargaining relationship itself." *Id* at 84. Stated more succinctly, "the unfair labor practices must have caused the employee disaffection here or at least had a 'meaningful impact' in bringing about that disaffection." *Id.* To determine whether a causal connection exists, one must analyze several factors including: "[1] the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; [2] any possible tendency to cause employee disaffection from the union; and [3] the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union." *Id.* (citing *Olson Bodies, Inc.*, 206 NLRB 779 (1973)).

None of the allegations in the five newest ULPs allege serious unilateral changes by the Employer that improperly affect the bargaining relationship or that are essential employment terms and conditions. The violation types that cause dissatisfaction "are those involving coercive conduct such as discharge, withholding benefits, and threats to shutdown the company operation." *Tenneco Auto,* 716 F.3d at 650 (finding employer's refusal to provide union addresses of replacement employees, requirement that employees obtain company permission before posting materials, and discipline of union advocate did not taint petition); *see also Goya Foods*, 347 NLRB 1118, 1122 (2006) (finding hallmark violations are those "issues that lead employees to seek union representation").

Here, the new ULP charges contain self-serving allegations and innuendos claiming Apple Bus questioned Teamsters's increased presence on the Apple Bus's property, refused to provide a requested document, posted a notice informing employees they could ask Apple Bus questions together with Teamsters, interrupted a Teamsters representative and told him that he would need to leave if he was soliciting while he was speaking to a non-union employee who

had conveyed that he did not want to pay union dues, and surface bargained four and two months before the charge's filing. Exs. V–Y. Much like the other charges that Teamsters has withdrawn, these allegations are nowhere near a "hallmark violation" such as "threats to shutdown the company operation." *Tenneco*, 716 F.3d at 650. Nor is Apple Bus's conduct the type that encourages employees "to seek union representation." *Goya Foods*, 347 NLRB at 1122. There is no evidence that Apple Bus employees even knew of the events at the bargaining table, or about a single conversation that allegedly took place with a union representative—all removing any possible taint. Teamsters' charges are undercut even more by the fact Apple Bus and Teamsters reached a collective bargaining agreement on July 17, 2019, removing any support for Teamsters's claims of 1) failure to bargain, 2) failure to provide documents that were necessary to reach said agreement, or 3) undermining Teamsters's ability to negotiate a fair deal. Any way Teamsters's charges are evaluated, they lack merit.

Even if Teamsters' charges had merit, they cannot block the election and nullify employees' Sections 7 and 9 rights as there is no "possibility of their detrimental or lasting effect on employees" and no "possible tendency to cause employee disaffection from the union." *Master Slack*, 271 NLRB at 84; *see also Tenneco*, 716 F.3d at 650. Petitioner and the other bargaining unit members already had determined they were dissatisfied with Teamsters and had filed their second decertification fourteen and fifteen months before these new ULP charges. All of this occurring long before Teamsters's new charges, and with several of the alleged violations occurring months before Teamsters even filed the applicable charge. *See* Ex. Y (waiting four and two months respectively to allege Apple Bus surface bargained); Ex. X (waiting three months to claim the Apple Bus employee interrupted the union representative's conversation with the non-

union member); Ex. V (waiting almost a month to claim Apple Bus refused to provide a document).

The claims and sequence of events here remove even the specter of taint from this decertification petition and suggests the ULP charges were, yet again, Teamsters's strategic attempt to block the election. *See Pinnacle Foods Grp., LLC*, 2019 WL 656304, at *1 (Chairmen Ring and Member Kaplan noting the suspect timing of a ULP "filed 18 months after the Union's certification and 12 months after the parties began bargaining, but only days after the decertification petition was filed" suggests a primary purpose of delaying the decertification election and supports the Board's revisit of "the blocking charge policy in a future rulemaking proceeding").

There is no causal connection, as required by *Master Slack*, between these ULP charges and Petitioner's decertification petition. Here, employees have been disenchanted with Teamsters for several years. Any way Teamsters's charges are evaluated, they lack merit, and, even if they do not, they cannot block the election and nullify employees' Sections 7 and 9 rights.

II. Alternatively, the Board should require the Region to process the petition or establish a "causal nexus" between the alleged Employer infractions and the employees' decertification desire to justify the "blocking charge" policy's continued application.

A. The Region should hold an immediate election.

The Regional Director deprived Petitioner and other employees of their Section 7 rights by automatically blocking their decertification election without evidence that the alleged ULPs influenced the employees to petition for Teamsters's removal. The Region's proper course of action is to hold the election, count the ballots, and then schedule a hearing *after* the election, if Teamsters files objections. *See supra* Section I.C.

B. The Region should establish, either itself or by requiring Teamsters to do so at a *Saint-Gobain* hearing, that a "causal nexus" exists precluding application of Exception 2 and the election's processing.

The Regional Director should, before blocking the election, have to establish why he 1) opines that there is a causal nexus between the charges and the decertification petition that precludes the election's processing, Casehandling Manual Sec. 11730.4 (noting if a Regional Director establishes no causal relationship between the ULP allegations and a decertification petition, the Regional Director should reconsider whether the charge should continue to block the petition's processing), and 2) believes the employees could not exercise their free choice in an election despite "blocking charges" and thereby excluding application of Exception 2, Casehandling Manual Sec. 11731.2 (noting a decertification election should proceed and the Regional Director should deny a blocking request where individuals could exercise their free choice). A mere statement that "[i]f found to be meritorious, these charges could interfere with employee free choice in an election, were one to be conducted" is insufficient without more to establish either fact. Ex. A, at 2.

In the alternative, the Regional Director should require Teamsters to prove a "causal nexus" exists at a *Saint-Gobain* evidentiary hearing. For a ULP to taint a petition or block an election, there must be a "causal nexus" between Apple Bus's actions and the employees' dissatisfaction with Teamsters. *Master Slack*, 271 NLRB 78. But here, there has been no such showing nor did the Regional Director compel Teamsters to make such a showing. Not only did the alleged violations occur over a year after the decertification had been filed negating any causal connection, Petitioner is left to speculate about Teamsters's claimed causal connection between the employees' motivations for wanting to oust Teamsters and Teamsters's new ULP charges.

At the very least, the Board should require the Regional Director to hold a *Saint-Gobain* hearing as a precondition to blocking an election based on Teamsters's ULP charges. *Saint-Gobain Abrasives, Inc.*, 342 NLRB at 434. At such an adversarial hearing Teamsters will have to meet its burden of proof that a "causal nexus" exists. *See, e.g.*, *Roosevelt Mem'l Park, Inc.*, 187 NLRB 517, 517–18 (1970) (holding a party asserting a bar's existence bears the burden of proof). As the Board noted in *Saint-Gobain*, "it is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights." *Saint-Gobain Abrasives, Inc.*, 342 NLRB at 434. But with no *Saint-Gobain* hearing or an explanation from the Region, all this record contains is conjecture.

The Regional Director has erred, again and again, by reflexively blocking this election and by failing to find, or by failing to require Teamsters to prove in an adversarial hearing, the "causal nexus" between the allegations in Teamsters's ULP charges and the employees' continued disaffection. Petitioner and her fellow employees' Section 7 and 9 rights have been rendered meaningless by this process.

CONCLUSION

The Board should grant Petitioner's Request for Review, reverse the Regional Director's decision, and order the Regional Director to process this decertification petition and count the ballots. In addition, the Board should overrule or substantially overhaul its "blocking charge" policy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2019, a true and correct copy of the foregoing Request for Review was filed with the Executive Secretary using the NLRB e-filing system, and copies were sent to the following parties via e-mail, as noted:

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPLE BUS COMPANY
Employer,
and

Case No. 19-RD-216636

GENERAL TEAMSTERS LOCAL 959
Union,
and

ELIZABETH CHASE
Petitioner.

UNION'S OPPOSITION TO PETITIONER'S FOURTH REQUEST FOR REVIEW

I. INTRODUCTION

On July 31, 2017, Elizabeth Chase (Chase), filed a decertification petition (Case No. 19-RD-203378).

On August 28, 2017, Chase's decertification petition was dismissed by the Regional Director on the basis of *UGL-UNICCO Service Co.,* 357 NLRB 801 (2011), and the successor bar doctrine (Exhibit B to Fourth Request for Review).

On September 25, 2017, Chase filed a Request for Review of the Regional Director's Decision and Order. The same day, Apple Bus filed a Request for Review of the Regional Director's Decision and Order.

On December 14, 2017, the National Labor Relations Board (Board) issued an Order denying the two Requests for Review because they raised no substantial issues warranting review.

On March 15, 2018, Chase filed another decertification petition (Case No. 19-RD-216636).

On March 16, 2018, Chase filed an unfair labor practice charge against Apple Bus for allegedly continuing to bargain with a minority union. The Regional Director dismissed that

charge on August 15, 2018 and the Office of Appeals later denied Chase's appeal (see Fourth Request for Review at 3, fn. 5).

On March 20, 2018, the Regional Director issued an Order Postponing Hearing Indefinitely due to five blocking unfair labor practice charges filed by the Union (Exhibit H to Fourth Request for Review).

On March 28, 2018, Chase filed Petitioner's Request for Review of the Regional Director's March 20, 2018 Order Postponing Hearing Indefinitely.

On or about April 9, 2018, Apple Bus filed Employer's Response to the Petitioner's Request for Review and Union's Brief in Opposition.

On May 2, 2018, the Regional Director notified Chase that the petition would be held in abeyance pending the investigation of unfair labor practice charges in Cases 19-CA-218290 and 19-CA-218755 (Exhibit K to Fourth Request for Review).

On May 9, 2018, this Board issued an Order denying Petitioner's Request for Review of the Regional Director's determination to hold the petition in abeyance as it raised no substantial issues warranting review (Exhibit L to Fourth Request for Review).

On May 15, 2018, Chase filed Petitioner's Second Request for Review. The Union filed its Opposition.

On July 9, 2018, the Regional Director notified Chase that the petition would be held in abeyance pending the investigation of the unfair labor practice charge in Case 19-CA-222039 (Exhibit O to Fourth Request for Review).

On July 23, 2018, Chase filed Petitioner's Third Request for Review of the Regional Director's July 9, 2018 election block.

On August 2, 2018, this Board issued an Order denying Petitioner's Second and Third Requests for Review of the Regional Director's determination to hold the petition in abeyance as they raised no substantial issues warranting review (Exhibit Q to Fourth Request for Review).

On August 1, 2019, Chase filed Petitioner's Fourth Request for Review of the Regional Director's July 9, 2019 election block. Chase cited Board Rules and Regulations 102.67 and 102.71 and urged this Board to re-evaluate the blocking charges rules (Fourth Request for Review at 1).

The Union files this Opposition to Petitioner's Fourth Request for Review. The Union incorporates by reference its previous Oppositions to Chase's Requests for Review. There are no compelling reasons to grant Chase's Fourth Request for Review. Chase's decertification petition was not dismissed or denied by the Regional Director. It was merely postponed or held in abeyance pending investigation and decisions on the Union's unfair labor practice charges (Exhibit O, first paragraph, to Fourth Request for Review).

II. FACTS

From 2008-2017, the Union represented First Student, Inc. employees performing services for the Kenai Peninsula Borough School District (see Exhibit B to Fourth Request for Review, Decision and Order of the Regional Director (DO) at 1).

After being awarded a bid, Apple Bus performed the services starting July 1, 2017. The Union and Apple Bus met on February 24, 2017 to discuss a probable collective bargaining relationship. For several months, the Union asked Apple Bus to agree to be bound by the First Student collective bargaining agreement (CBA) but Apple Bus refused. The Union rejected an agreement presented by Apple Bus. DO at 2.

On June 8, 2017, Apple Bus mailed job offer letters to 105 of the 126 former First Student employees. DO at 2. By August 11, 2017, 98 former First Student employees and 4 persons who

had not worked for First Student accepted positions with Apple Bus. Apple Bus expected to employ 115 Bargaining Unit employees by August 14, 2017. DO at 3.

On July 18 and 19, 2017, the Union and Apple Bus first met to bargain for a new CBA. Tentative agreement was reached on Declaration of Purpose, Recognition, Maintenance of Standards, and Union Stewards articles. DO at 2-3. The Union and Apple Bus met again on August 9, 10, and 11, 2017. DO at 3. Further negotiations were held after that. The Union asked to schedule more days for negotiations but Apple Bus usually only agreed to meet two days a month, refused to schedule dates past the next month, and canceled some negotiation sessions.

Apple Bus sent out job offer letters in June 2017, hired a majority of Bargaining Unit employees in July 2017 at the earliest, and did not have a majority of Bargaining Unit employees hired and on the job until August 14, 2017. DO at 2-3.

The Regional Director noted, "A 'reasonable period of bargaining' for the purposes of the successor bar doctrine ... is 'measured from the date of the first bargaining session after recognition.'" DO at 3 (citations omitted). Based on the foregoing facts, and notwithstanding the Regional Director's DO and Chase's argument that the successor bar expired on February 24, 2018 (Fourth Request for Review at 2, fn. 4), the Union urges that the successor bar should be measured from no earlier than the date of the first substantive bargaining meeting of the Union and Apple Bus on July 18, 2017 and should have lasted until at least July 18, 2018. However, since Apple Bus did not have a majority of Bargaining Unit employees hired and on the job until August 14, 2017 (DO at 2-3), the Union further urges that the successor bar should have been seen as in effect until at least August 14, 2018.

Apple Bus never questioned the Union's majority status and agreed to a Recognition article. DO at 3. Chase argues that most employees were unaware of the status of negotiations or

employer misconduct (Fourth Request for Review at 3, 13, 18). However, four Apple Bus employees have been on the Union negotiating team and directly involved when the Union and Apple Bus negotiated. The Union kept employees informed through meetings, events, gatherings, publications, and social media.

III. ARGUMENT IN OPPOSITION TO REVIEW

In requesting review for the fourth time, Chase cited this Board's Rules and Regulations Sections 102.67 and 102.71 (Fourth Request for Review at 1). Those sections provide for granting a request for review only where compelling reasons exist therefor, i.e., that there are compelling reasons for reconsideration of an important Board rule or policy.

Webster's II New Riverside University Dictionary defines "compel" or "compelling" as, "1. To force, drive, or constrain, 2. To make necessary." Chase may wish to see the law and blocking charge policy changed but there are no compelling reasons to change the policy.

A. The successor bar provided stability for the bargaining relationship

Chase's initial decertification petition was dismissed by the Regional Director on the basis of *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011) and the successor bar doctrine (Exhibit B to Fourth Request for Review). *UGL* restored the "successor bar" doctrine. Under the doctrine, when a successor employer acts in accordance with its legal obligation to recognize an incumbent representative of its employees, that representative is entitled to represent the employees in collective bargaining with their new employer for a reasonable period of time, without challenge to its representative status. *UGL* at 801, citing *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999).

Analogous bar doctrines are well established in labor law, based on the principle that "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed." The bar promotes a primary goal of the National Labor Relations Act (NLRA) by stabilizing labor-management relationships

and promoting collective bargaining, without interfering with the freedom of employees to periodically select a new representative or reject representation. *UGL* at 801.

The *UGL* Board observed that the transition from one employer to another threatens to seriously destabilize collective bargaining, even when the new employer must recognize the incumbent union. The new employer is free to choose (on any non-discriminatory basis) which of the predecessor's employees it will keep and which will go. It is free to reject an existing CBA. It will often be free to establish unilaterally all initial terms and conditions of employment. In a setting where everything employees have achieved through collective bargaining may be swept aside, the union must deal with a new employer and, at the same time, persuade employees that it can still effectively represent them. *UGL* at 805.

On the effect of a successor situation on employees, *UGL* noted, "After being hired by a new company ..., employees initially will be concerned primarily with maintaining their new jobs. *In fact, they might be inclined to shun support for their former union, especially if they believe that such support will jeopardize their jobs with the successor*.... Without the presumptions of majority support ..., an employer could use a successor enterprise as a way of getting rid of a labor contract and of exploiting the employees' hesitant attitude towards the union to eliminate its continuing presence." *UGL* at 803 (citation omitted).

B. The successor bar protected employee free choice

The *UGL* Board noted that the *St. Elizabeth Manor* Board rejected the view that the "successor bar" gave too little weight to employee freedom of choice, which it recognized as a "bedrock principle of the statute." The crucial aspect of the balance struck by the successor bar was that the bar "extends for a 'reasonable period,' not in perpetuity." *UGL* at 804, 808. *UGL* defined the reasonable period of bargaining mandated by the successor bar. Where the successor employer recognizes the union, but unilaterally announces and establishes initial terms and

conditions of employment before proceeding to bargain, the "reasonable period of bargaining" will be a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the union and the employer. The Board will apply the *Lee Lumber* analysis to determine whether the period has elapsed. Where the parties are bargaining for an initial contract, because the destabilizing factors associated with successorship are at their height, a longer insulated period is appropriate. *UGL* at 808-809.

C. The blocking charge policy is consistent with the purpose of the NLRA, aims to protect employee rights, and should not be changed; the current case shows no reason to change the blocking charge policy; no adversarial hearing is needed

Chase alleges that the Regional Director did not hold a hearing, there was no proof of a "causal nexus," and the blocking charge rules halt decertification elections simply based on a union filing an unfair labor practice charge (Fourth Request for Review at 3-4, 5-6, 9, 20-21). Chase claims that the unfair labor practice charges are without veracity or merit (Fourth Request for Review at 4, 12, 13, 16, 18, 19). Chase cynically and inaccurately portrays the Regional Director's Decision and Order as at the Union's behest (Fourth Request for Review at 2, 3, 10), invariable (Fourth Request for Review at 13), with immediate application (Fourth Request for Review at 13), predictable (Fourth Request for Review at 9), arbitrary (Fourth Request for Review at 10), automatic (Fourth Request for Review at 13, 16, 19), and reflexive (Fourth Request for Review at 21) in response to the Union filing blocking charges.

Chase fails to acknowledge the requirements and guidance of the Board's Casehandling Manual Part Two Representation Proceedings:

11730 Blocking Charge Policy – Generally

The filing of a charge does not automatically cause a petition to be held in abeyance. When a party to a representation proceeding files an unfair labor practice charge and desires to block the processing of the petition, the party must file a request that the petition be blocked and must simultaneously file a written offer of proof in support of the charge that contains the names of the

witnesses and a summary of each witness's anticipated testimony ... The charging party requesting to block the processing of the petition must promptly make its witnesses available. If the regional director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employees free choice in an election or would be inherently inconsistent with the petition itself, ... the regional director shall continue to process the petition and conduct the election where appropriate ... [T]he blocking charge policy is premised solely on the Agency's intention to protect the free choice of employees in the election process.

As stated in the last sentence, the blocking charge policy is intended to protect the free choice of employees in the election process. The policy began in 1937 "as part of the Board's function of determining whether an election will effectuate the policies of the Act." *American Metal Products*, 139 NLRB 601 (1962); *U.S. Coal & Coke*, 3 NLRB 398 (1937). The Board's principal role in elections is to ensure that employees are able to express their choice free of unlawful coercion. The policy aims to ensure that interference with employee choice is remedied before an election. The policy gives a regional director discretion to not process a petition in the face of a pending unfair labor practice charge if the regional director believes that employee free choice is likely to be impaired. Here, it should be assumed that the Regional Director properly followed the above requirements and guidance and sought to protect employee free choice in the election process. The Regional Director's July 9, 2018 notification (Exhibit O to Fourth Request for Review) stated, "... In Case 19-CA-222039, ... The discharge of employee Knight, if found to be meritorious, could interfere with employee free choice in an election, were one to be conducted (See Representation Casehandling Manual Section 11730.2). As such, the Region cannot process the petition further until final disposition of the 8(a)(3) allegation in the afore-mentioned unfair labor practice charge."

Chase mistakenly, and hysterically, portrays the Union's unfair labor practice charges and blocking charges as calculated filings or withdrawals, strategically filed, intended to strategically delay, and Machiavellian maneuvering (Fourth Request for Review at 3, 9, 10, 12, 19). In fact,

the unfair labor practice charges and offers of proof filed by the Union have raised serious concerns about unlawful Apple Bus coercion and interference with employee choice including failure to bargain in good faith by:

1. Failing to provide information the Union requested during contract negotiations - information necessary for the Union to bargain for a new CBA. Charge 19-CA-212764.

2. Unilaterally changing terms and working conditions for employees during CBA negotiations. Charge 19-CA-212776.

3. Unilaterally changing employees' wages during CBA negotiations. Charge 19-CA-212798.

4. Failing to agree to schedule negotiations and meet with the Union at reasonable dates/times for the purpose of bargaining a CBA. Charge 19-CA-212813.

5. Failing to provide prior notice to the Union re changes it was going to make during the course of CBA negotiations for holiday pay, standby pay, park out benefits/pay, and longevity; during the course of bargaining the Company unilaterally provided gifts to certain employees in the form of holiday pay, standby pay, and park out pay/benefits without prior knowledge of the Union; unilaterally ceasing holiday pay after it had established a practice of paid holidays. Charge 19-CA-214770.

6. Surface bargaining; lack of commitment to the bargaining process as evidenced by failure to meet with the Union at reasonable times, including the frequency of meetings, actual bargaining time, the number of tentative agreements reached, the lengthy caucuses taken by the Company for relatively non-complex issues, continued refusal to negotiate a Union security clause, and refusal to negotiate over certain sections of the proposed CBA, among other things. Charge 19-CA-218290.

7. Allowing and/or assisting certain employees to pursue decertifying the Union; allowing certain employees to utilize Company resources, including decertification activity on Company time, among other things. Charge 19-CA-218755.

8. Discriminating against employees based on whether they support or do not support the Union and thereby discouraging employees from supporting the Union; termination of Toni Knight. Charge 19-CA-222039.

9. Failing to bargain in good faith, failing to provide policies and information necessary to bargain for a new CBA. Charge 19-CA-223071.

10. Refusing or interfering with Union representatives' access. Charge 19-CA-238757. Resulted in an NLRB settlement that required Apple Bus to post a notice.

11. Soliciting direct dealing, telling employees to contact management with questions about bargaining proposals. Charge 19-CA-242879. The Union recently withdrew this charge.

12. Failing to bargain in good faith, failing to provide revenue contract necessary to bargain for a new CBA. Charge 19-CA-242905. The Union recently amended this charge. The NLRB found merit to the charge.

13. Interfering, chilling, and surveilling Union representative. Charge 19-CA-242952. The Union recently amended this charge. The NLRB found merit to the charge.

14. Failing to bargain in good faith, surface bargaining, and delay tactics. Charge 19-CA-242954. The Union recently amended this charge. The NLRB found merit to the charge.

15. Continued discrimination in disciplinary actions against employees who support the Union; favored treatment to employees who support the decertification petition. Charge 19-CA-246017.

With respect to Charge 19-CA-242905 (listed in 12 above), Charge 19-CA-242952 (listed in 13 above), and Charge 19-CA-242954 (listed in 14 above), the NLRB found merit to each charge. Each charge has blocked an election. The Union understands that the NLRB has proposed a settlement to Apple Bus and that Apple Bus has accepted the proposal. The Union understands that a 60-day posting will be required and during that time the election blocks will continue. If there is non-compliance, the Regional Director will issue a Complaint. The only issue Apple Bus may then raise will be whether it defaulted on the terms of the Settlement Agreement.

With respect to Charge 19-CA-222039 (listed in 8 above), Chase fails to mention (Fourth Request for Review at 5) that, as stated in the Charge, Union supporter Toni Knight was terminated for allegedly violating a policy that neither she nor the Union had ever been given, despite requests for the policy. In her Declaration (Exhibit N to Fourth Request for Review), Chase very carefully chose her words to state that she never left her bus unattended while children were on it, and she was never warned or disciplined for doing so. Chase failed to mention that in 2017 she was given a written warning and ordered to undergo retraining for failing to set her parking brake before

getting out of the driver's seat, which resulted in a preventable accident (see Exhibit "A" attached). Chase only received a written warning while Toni Knight was terminated for similar conduct. The disparity in treatment of Chase and Toni Knight is evidence of the Employer's continued all-out campaign of intimidation of union supporters, support of decertification efforts, and repeated unfair labor practices.

Since the filing of Chase's Fourth Request for Review, the continued coercion and interference by Apple Bus with employee free choice forced the Union to file the additional unfair labor practice charge listed in 15 above.

Chase implies, but fails to prove, that there was anything improper about the withdrawal by the Union of a number of unfair labor practice charges. Reasons for withdrawal can include because a charge was refiled, requested information was finally provided, or other good faith reasons. If not for settlement agreements reached, a Complaint may have been issued with one or more of the Union charges.

Chase alleges that the Regional Director is violating her Sections 7 and 9 rights by "gratuitously monitoring" settlements and compliance (Fourth Request for Review at 9). To the contrary, the Regional Director detailed in his letter (Exhibit A to Fourth Request for Review) the valid reasons and authority for continued monitoring and the blocking charges. Of critical importance is the fact that each of Cases 19-CA-242905, 19-CA-242952, and 19-CA-242954 still has a block in place, the NLRB found merit to the charges, and the charges have not been finally resolved.

Chase argues (Fourth Request for Review at 12) for an election on the authority of *Johnson Controls, Inc.*, 368 NLRB 20 (July 3, 2019). That case involved anticipatory withdrawal of recognition and is distinguishable from Apple Bus and its campaign of unfair labor practices. Here

the unfair labor practice charges have not all been investigated or resolved. Therefore, Chase's attempt (Fourth Request for Review at 16) to rely on *Cablevision Sys. Corp.*, is also misguided and does not advance her crusade.

Chase's reliance (Fourth Request for Review at 11, 20, 21) on *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004), is off base. In *Saint Gobain* the Regional Director dismissed a decertification petition without a hearing. The Board held that a hearing was a prerequisite to denying the petition. At 434. By contrast, here the Regional Director did not deny or dismiss Chase's petition. A *Saint Gobain* hearing does not have to be separate from the unfair labor practice hearing. A regional director may use the record in an unfair labor practice hearing in making a *Saint Gobain* determination. See, e.g., *NTN-Bower Corp.*, 10 RD 1504 (Order, May 20, 2011). *Saint Gobain* did not address situations like Apple Bus where the employer has encouraged decertification and surface bargained.

Chase desperately attempts to rely on dissenting Board and legal views, Orders, and cases before the 2014 rulemaking (Fourth Request for Review at 12-14). But Chase must admit that only 30% of decertification petitions are blocked (Fourth Request for Review at 15). *Valley Hospital Medical Center, Inc. and SEIU Local 1107*, Case 28-RD-192131 (Order July 6, 2017), denying Requests for Review of the Regional Director's decision to hold the decertification petition in abeyance pending the investigations of unfair labor practice charges, noted:

> Contrary to our colleague's criticism of the Board's longstanding blocking charge policy, we find it continues to serve a valuable function. As explained in our 2014 rulemaking, the blocking charge policy is critical to safeguarding employees' exercise of free choice. See Representation-Case Procedures, 79 Fed. Reg. 74308, at 74418-74420, 74428-74429 (Dec. 15, 2014). Indeed, "[i]t advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference." Id. at 74429. Nevertheless, in response to commentary and our colleague's concerns, the Election Rule modified the policy to limit opportunities for unnecessary delay and abuse. Id. at 74419-20, 74490.

> We also observe that in upholding the Election Rule, the U.S. Court of Appeals for the Fifth Circuit recently rejected an argument similar to our colleague's ... and found that the Board did not act arbitrarily by implementing various regulatory changes resulting in more expeditious processing of representation petitions without eliminating the blocking charge policy altogether. See *Associated Builders and Contractors of Texas, Inc. v. NLRB*, 826 F.3d 215, 228 (5th Cir. 2016). In doing so, the court cited with approval its prior precedent in *Bishop v. NLRB*, 502 F.2d 1024 (5th Cir. 1974), wherein the court set forth the following explanation for why the blocking charge policy is justified:
>
> > If the employer has in fact committed unfair labor practices and has thereby succeeded in undermining union sentiment, it would surely controvert the spirit of the Act to allow the employer to profit by his own wrongdoing. In the absence of the 'blocking charge' rule, many of the NLRB's sanctions against employers who are guilty of misconduct would lose all meaning....
> >
> > Nor is the situation necessarily different where the decertification petition is submitted by employees instead of the employer or a rival union. Where a majority of the employees in a unit genuinely desire to rid themselves of the certified union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.
>
> Id. At 1029 (quoting *NLRB v. Big Three Industries, Inc.*, 497 F.2d 43, 51-52 (5th Cir. 1974)).
>
> Chairman Miscimarra favors a reconsideration of the Board's blocking charge doctrine for reasons expressed in his and former Member Johnson's dissenting views to the Board's Election Rule, 79 Fed. Reg. 74308 at 74430-74460 (Dec. 15, 2014), but he acknowledges that the Board has declined to materially change its blocking charge doctrine....

The Union long negotiated with Apple Bus to try to reach agreement on a first CBA. The Union had to negotiate virtually everything and the issues were complex. Apple Bus, in an initial effort to "run out the successor bar clock" and undermine union sentiment, engaged in repeated unfair labor practices, which forced the Union to file unfair labor practice charges. Apple Bus long hindered the parties' reaching a CBA in the limited time allotted for the Union to do so. Due to the repeated unfair labor practices of Apple Bus, the Union needed more time to reach agreement on the terms of a first CBA. The blocking charges and Regional Director's actions were appropriate.

Chase alleges that the unfair labor practice charges and blocking charges are without veracity or merit (Fourth Request for Review at 4, 12, 13, 16, 18, 19). Chase has tried to downplay

the many egregious unfair labor practices of Apple Bus. The Union filed each hlocking charge in good faith based on the merits and the information known to the Union. The Board has traditionally had considerablc discretion to adopt practices to effectuate the policies of the NLRA. *American Metal Products*, 139 NLRB 601 (1962).

Employers are not entitled to an election caused by their unlawful conduct. *Frank Bros. v. NLRB*, 321 US 702 (1944) (election not appropriate remedy where union lost majority after employer's wrongful refusal to bargain); *Brooks v. NLRB*, 348 US 96 (1954) (employer's refusal to bargain may not be rewarded with the decertification it seeks). The blocking charge policy has been approved by Federal Courts. *Associated Builders and Contractors of Texas, Inc.*, 826 F3d 215, 228 (5th Cir. 2016); *Bishop v. NLRB*, 502 F2d 1024 (5th Cir. 1974); *NLRB v. Big Three Industries, Inc.*, 497 F2d 43, 51-52 (5th Cir. 1974).

The Union should not be forced to proceed to an elcction when there are serious and substantial concerns that repeated unfair labor practices by Apple Bus have undermined employee free choice. A tainted election may cause additional damage that cannot be remedied by rerunning an election. The blocking charge policy saves the Board from wasting resources on a "contingent" election and forces remediation of thc unfair labor practices beforc an election. No policy of the NLRA is advanced by conducting an elcction unless employees can vote without unlawful interference and coercion. The blocking charge policy protects against frivolous charges, as indicated by statistics showing a large decline in dismissal of decertification petitions since the new rule went into effect. "Unfair labor practice charges that warrant blocking an election involve conduct that is inconsistent with a free and fair election … there is no inconsistency between the final rule's preservation of that basic policy and the other changes made by the final rule." 79 Fed. Reg. 74429 (December 14, 2014).

Chase claims majority support for her decertification efforts (Fourth Request for Review at 3, 14, 16, 19). The Union has no knowledge that it has allegedly lost the support of a majority of Bargaining Unit employees. The Union does not know the details of Chase's alleged petition, how or when signatures were gathered, how many signatures are not valid, and other factors. Apple Bus recognized the Union as the representative of the employees. It has not been proved that the Union does not represent the majority of Bargaining Unit employees. An actual loss of majority support needs to be proved, not simply doubt about majority status, before an employer can withdraw recognition from a union. *UGL* at 806, fn. 21 (citation omitted). As addressed in *Bishop v. NLRB*, where the decertification petition is submitted by employees, where a majority of the employees in a unit genuinely desire to rid themselves of the union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.

IV. CONCLUSION

There is no good reason to change the current blocking charge policy. For the above and other reasons, this Board should deny Chase's Fourth Request for Review.

Respectfully submitted this 12 day of August 2019.

John Eberhart, General Counsel
General Teamsters Local 959
520 E. 34th Avenue, Suite 102
Anchorage AK 99503

Tel. (907) 751 8563
jeberhart@akteamsters.com

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, a true and correct copy of the Union's Opposition to Petitioner's Fourth Request for Review was filed electronically with the Executive Secretary using the NLRB e-filing system and copies were emailed to:

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave. Suite 2948
Seattle, Washington 98174
ronald.hooks@nlrb.gov and
rachel.cherem@nlrb.gov

Amanda K. Freeman
National Right to Work Legal Defense Foundation, Inc.
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Springfield VA 22160
akf@nrtw.org

W. Terrence Kilroy
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City MO 64112
tkilroy@polsinelli.com

John Eberhart
General Counsel
General Teamsters Local 959

FORM NLRB-5546
(4-15)

Request to Block

International Brotherhood of Teamsters Local 959 is a party to the representation
(Name of Requesting Party)

proceeding in Case 19-RD-216636. It has filed an unfair labor practice
(Case Number)

charge in Case 19-CA-246017 and hereby requests that the petition be blocked by this charge.
(Case Number)

John Marton
Signature

08/09/2019
Date

John Marton, Business Representative
Name and Title

As required by Section 103.20 of the Board's Rules, the party seeking to block the petition must simultaneously file an offer of proof with the request to block that provides the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block must also promptly make available to the Region the witnesses identified in its offer of proof. The offer of proof is not served on the other parties.

Offer of Proof

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

(continued on attached page)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

(Continued on next page)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

Witness Name: (b) (6), (b) (7)(C)

Summary of Testimony:

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (continued from page 1)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (continued from page 2)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

[redacted]

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

Agency Website: www.nlrb.gov
Telephone: (206)220-6300
Fax: (206)220-6305

August 20, 2019

Amanda K. Freeman and Glenn M. Taubman
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Rd., Suite 600
Springfield, VA 22160

Re: *Apple Bus Company*
Case 19-RD-216636

Dear Ms. Freeman and Mr. Taubman:

This is to notify you that the petition in the above-captioned case will continue to be held in abeyance pending the investigation and disposition of the recently filed unfair labor practice charge in Case 19-CA-246017. Case 19-CA-242017 was filed on August 1, 2019, and alleges that the Employer has violated §§ 8(a)(3) and (5) of the Act by discriminatorily disciplining, suspending, and terminating certain employees who support the Union. On August 9, 2019, the Union filed a request to block together with an offer of proof detailing its evidence in support of the allegations. Based on this, I have determined the decertification petition will be held in abeyance pending the investigation. Such action is consistent with Representation Casehandling Manual Section § 11730.2 Type I Charges: Charges that Allege Conduct that Only Interferes With Employee Free Choice, which provides:

> When the charging party in a pending unfair labor practice case is also a party to a petition, and the charge alleges conduct that, if proven, would interfere with employee free choice in an election, were one to be conducted, and no exception (Sec. 11731) is applicable, the charge should be investigated and either dismissed or remedied before the petition is processed if the charging party files a request to block accompanied by a sufficient offer of proof and promptly makes its witnesses available.

As you are aware, the RD petition was already blocked. It will remain so, as required by Representation Casehandling Manual § 11734, Resumption of Processing of Petition, until the Employer has taken all remedial action required by the two settlement agreements in: (1) Cases 19-CA-230002, 19-CA-229797, 19-CA-228939, 19-CA-

229782, 19-CA-227811, 19-CA-227810, 19-CA-222050, 19-CA-221066, 19-CA-218290, and 19-CA-212813; and (2) Cases 19-CA-242905, 19-CA-242952, and 19-CA-242954.[1]

As to the first group of cases, 19-CA-230002 *et. al*, the Board has denied requests for review of the Region's decision to block the petition. The Region, per Compliance Casehandling Manual § 10528.4, Bargaining Obligations Monitored for a Reasonable Period of Time, is continuing to monitor compliance for a reasonable period time after the expiration of the notice posting period.

As to the second group of cases, the Petitioner has filed a request for review and the matter is pending before the Board.[2] In the interim, the Region approved a bilateral settlement agreement on August 16, 2019, encompassing the allegations of these charges filed on June 6 and 7, 2019. The allegations include that the Employer violated §§ 8(a)(1) and (5) of the Act by, *inter alia*, failing to provide the Union with information, unilaterally changing its visitation policy, engaging in regressive bargaining, and creating the impression of surveillance. Since these allegations involve conduct that could interfere with employee free choice in an election, were one to be conducted, the Region blocked the petition.

Right to Request Review: Pursuant to § 102.71 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review shall be submitted in eight copies, unless filed electronically, with a copy filed with the regional director, and all copies must be served on all the other parties. The request must contain a complete statement setting forth facts and reasons upon which the request is based.

***Procedures for Filing Request for Review*:** A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time)** on **September 3, 2019**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on **September 3, 2019.**

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties

[1] A third case, 19-CA-238757, involving access and described in detail in the letter to you from Regional Director Hooks dated July 9, 2019, recently closed in compliance. The parties' informal settlement agreement in that matter had been approved on about May 14, 2019, and the case closed in compliance on August 8, 2019. As such, it no longer blocks the processing of the petition.

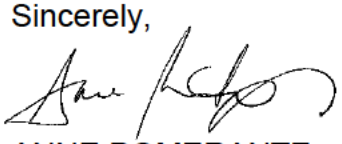
[2] On June 6, 2019, the Union also filed a charge in Case 19-CA-242879, alleging the Employer dealt directly with employees regarding bargaining proposals. Although the Region granted the Union's request to block, that charge no longer serves to block the petition, as it has since been withdrawn.

to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

The Board may grant special permission an extention of time within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Sincerely,



ANNE POMERANTZ
Acting Regional Director

cc: Office of the Executive Secretary
(by e-mail)

John Eberhart, General Counsel
Teamsters Local 959
520 East 34th Ave Ste 102
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Apple Bus Company
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Soldotna, AK 99669-8325

United States Government

OFFICE OF THE EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
1015 HALF STREET SE
WASHINGTON, DC 20570

September 3, 2019

Re: Apple Bus Company
Case 19-RD-216636

EXTENSION OF TIME TO FILE REQUEST FOR REVIEW

The request for an extension of time in the above-referenced case is granted. The due date for the receipt in Washington, D.C. of Request for Review of the Regional Director's Decision to Block the Petition is extended to **September 13, 2019**. This extension of time to file requests for review applies to all parties.

/s/ Farah Z. Qureshi
Associate Executive Secretary

cc: Parties
Region

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Apple Bus Company,
Employer,
and

Case No. 19-RD-216636

General Teamsters Local 959,
Union,
and

Elizabeth Chase,
Petitioner.

PETITIONER'S FIFTH REQUEST FOR REVIEW

Petitioner Elizabeth Chase ("Petitioner" or "Chase") requests review of the Regional Director's August 20, 2019 election block, Petitioner's *fifth* request for review since March 2018. NLRB Rules & Regs. §§ 102.67 and 102.71; Ex. A, Reg'l Director's Letter Holding in Abeyance, *Apple Bus Co.*, Case No. 19-RD-216636 (August 20, 2019). General Teamsters Local 959's ("Teamsters") continues to file unfair labor practice charges ("ULP") and the Region continues automatically to hold Petitioner's decertification election in abeyance right on the brink of an election being a possibility for this bargaining unit, which has waited since July 2017 to exercise its NLRA Sections 7 and 9 rights. 29 U.S.C. §§ 157 and 159.

Despite the Act's purpose of securing employee free choice, the current "blocking charge" rules continue to have significant negative consequences on employees' rights to express their views about representation. Chase urges the Board to reevaluate its continued allowance of "blocking charges" to prevent her decertification election as cases that halt employee

decertification elections raise "compelling reasons for reconsideration of [a] . . . Board rule or policy." NLRB Rules & Regs. §§ 102.71(b)(1), (2).[1]

FACTS

Petitioner adopts and incorporates the facts stated in her August 1, 2019 Fourth Request for Review, *see* Ex. E, at 2–9, and provides the updated information below that has taken place since.

A. One out of three settlements finally complete.

On March 28, 2019, Teamsters filed a blocking charge claiming Apple Bus interfered with a Teamsters representative's access to both the property and employees. Ex. E, at Ex. T, Charge Against Employer, Case No. 19-CA-238757. Teamsters and Apple Bus entered into a Board settlement ("Second Settlement") on, or about, May 14, 2019 resolving it, Ex. E, at Ex. U, Settlement Agreement, and the case closed in compliance on August 8, 2019, Ex. A, at 2 n.1. Under the Board's August 20, 2019 letter, that charge is no longer blocking the decertification election. Ex. A, at 2 n.1.

B. Teamsters withdraws one of its four new blocking charges.

Teamsters filed Case 19-CA-242879 on June 6, 2019 alleging Apple Bus improperly directed employees to talk to the employer, in addition to a Teamsters representative, about

[1] S*ee Heavy Materials, LLC-St. Croix Div.*, 12-RM-231582 (Order of May 30, 2019), https://apps.nlrb.gov/link/document.aspx/09031d4582c2b074 (Members Kaplan and Emanuel noting they "would consider revisiting the Board's blocking charge policy in a future appropriate proceeding"); *UFCW Local 951*, 07-RD-228723 (Order of April 25, 2019), http://apps nlrb.gov/link/document.aspx/09031d4582bbf45f (Chairmen Ring and Member Emanuel noting the same); *Klockner Metals Corp.*, 15-RD-217981 (Order of May 17, 2018), http://apps.nlrb.gov/link/document.aspx/09031d45827eafd2 (Member Kaplan noting the same and also stating that "he believes an employee's petition for an election should generally not be dismissed or held in abeyance based on contested and unproven allegations of unfair labor practices"); *see, e.g.*, *Pinnacle Foods Grp., LLC,* No. 14-RD-226626, 2019 WL 656304, at *1 (Order of Feb. 4, 2019) (Chairmen Ring and Member Kaplan noting the suspect timing of ULP blocking charges suggests a purpose to delay a decertification election, and supports revisiting "the blocking charge policy in a future rulemaking proceeding"); *Metro Ambulance Servs.*, 10-RC-208221 (Order of July 17, 2018) (Chairman Ring and Member Emanuel stating there are "significant issues with the Board's Election Rule and the law pertaining to blocking charges that potentially frustrate the rights of employees, and they believe the policy should be reconsidered").

"bargaining proposals" through a May 21, 2019 flyer on a bulletin board. Ex. E, at Ex. W, Charge Against Employer, Case No. 19-CA-242879 (July 31, 2019). The Region approved Teamsters withdrawal of that charge on July 31, 2019, but did so only after the Region had granted Teamsters's request to block based on that charge. *See* Ex A, at 2 n.1; Docket Activity, https://www.nlrb.gov/case/19-CA-242879 (approving withdrawal on July 31, 2019)

C. Teamsters files yet another blocking charge.

On August 1, 2019, Teamsters filed a new blocking charge against Apple Bus almost five months after some of the alleged conduct occurred. Ex. B, Charge Against Employer, Case No. 19-CA-246017. In that charge, Teamsters publicly disparaged several of the very employees it is supposed to represent, questioning their work skills and, in effect, "throwing them under the bus." Ex. B, at 2. In this newest ULP charge, Teamsters claims Apple Bus has discriminated against pro-union employees by giving favorable treatment to three non-union members unlike the unfavorable treatment it gave to three union members in 2018 and one in 2019. Ex. B. Specifically, Teamsters claims Apple Bus:

1) fired Toni Knight ("Knight") in 2018 for leaving her school bus unattended while it was still running and with children still sitting on it but did not fire or discipline Linda Reichert ("Reichert") in February 2019 when she allegedly exited her school bus without "securing" it while children were on board and only reprimanded Elizabeth Chase (petitioner) for allegedly committing the same misconduct;
2) wrote up Rhonda Johnson ("Johnson") and required "retraining" for her to continue her employment with Apple Bus for an accident with a tree but did not do anything to Greg Fisher in February 2019 when he backed into another bus that was parked, or to Reichert who allegedly sideswiped another bus that was also parked; and

3) issued a written warning to Mario Concepcion in February 2019 for attendance issues, when no attendance policy exists, after it had initially suspended him in 2018 for hitting a guard rail but ultimately reduced his hours in half.

Ex. B, at 2.

Teamsters has, yet again, misstated the facts about Chase's, Reichert's, and Fisher's respective situations. Not only that, Teamsters has raised the very same allegation about alleged disparate discipline of Chase versus Knight that it did in a prior ULP charge it then withdrew four months later. Ex. E, at Ex. M, Charge Against Employer, Case No. 19-CA-222039 (June 12, 2018); Docket Activity, https://www.nlrb.gov/case/19-CA-222039 (approving withdrawal on Oct. 1, 2018). Rather than hold a hearing, determining the blocking charges' legitimacy, or ordering Teamsters to prove a "causal nexus" between the alleged conduct and the decertification petition, the Regional Director issued his seventh abeyance order based on these newest allegations. Ex. A. In addition, the Regional Director took the unprecedented step of continuing to "monitor compliance for a reasonable period [sic] time after the expiration of the notice posting period" of the two original charges even though the first two outstanding charges have been resolved through the First Settlement.[2] Ex. A, at 2–3.

Chase appeals this newest blocking charge abeyance decision that conflicts with her and the bargaining unit's Sections 7 and 9 rights. Teamsters's continued strategic blocking and the

[2] Under the NLRB's Casehandling Manual, a Region should process a petition once a settlement is reached for an alleged but unproven unfair labor practice, the respondent does not admit liability as part of that settlement, and the petition is not withdrawn. NLRB Casehandling Manual (Part Two) Representation Proceeding Secs. 11733.2(a)(1); 11733.2(a)(2); 11733.2(a)(3). Because all three things occurred here, it is unclear why the Region is still claiming it is proper for it to continue to hold the petition in abeyance. *See Cablevision Sys. Corp*., 367 NLRB No. 59, 2018 WL 6722907, *3 (2018) (affirming a Region must process a decertification election "'at the petitioner's request following the parties' settlement and resolution of the unfair labor practice charge'" (quoting *Truserv Corp.*, 349 NLRB 227, 227 (2007))).

Region's automatic abeyance based on Teamsters's unproven (and unprovable) allegations and its continued monitoring of resolved cases destroy Chase's and the bargaining unit's rights.

ARGUMENT

Petitioner adopts and incorporates the Sections I.A–C, and II.A arguments stated in her Fourth Request for Review, *see* Ex. E, at 11–16, 19, and provides the additional arguments below.

Following current practice, the Regional Director once again automatically blocked Petitioner's decertification election as soon as Teamsters filed its recent charge. Ex. A. As Chase has argued multiple times now, the Board should cease applying a double-standard to certification and decertification elections, grant Chase's request for review, reverse the Regional Director's decision, order Petitioner's election processed, and follow former Chairman Miscimarra's urging to implement a wholesale revision of the "blocking charge" rules. *Cablevision Sys. Corp.*, Case 29-RD-138839, *1 n.1 (June 30, 2016) (Order Denying Review), *dismissal rev'd, rem'd for pet. processing*, 367 NLRB No. 59 (2018).[3]

In the alternative, the Board should require the Region, before it automatically applies the "blocking charge" policy, either 1) explain specifically what causal connection(s) exists to permit it to block Petitioner's election, *see* NLRB Casehandling Manual (Part Two) Representation Proceeding Sec. 11730.4 [hereinafter Casehandling Manual]; 2) explain why it believes the employees cannot exercise their free choice in an election despite the new ULP charge, removing Exception 2's application, Casehandling Manual Sec. 11731.2; or 3) conduct a *Saint-Gobain*

[3] *See also Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 426 (4th Cir. 2001) (noting Section 7 "guards with equal jealousy employees' selection of the union of their choice and their decision not to be represented at all"); *Valley Hosp. Med. Ctr., Inc. & SEIU Local 1107*, 28-RD-192131, 2017 WL 2963204 (Order Denying Review, July 6, 2017); *see also Pinnacle Foods Grp., LLC*, No. 14-RD-226626, 2019 WL 656304, at *1 (Order of Feb. 4, 2019) (Chairmen Ring and Member Kaplan, concurring)

"causation" hearing as a precondition to blocking Petitioner's decertification election, s*ee Saint-Gobain Abrasives, Inc.*, 342 NLRB 434 (2004).

I. The Board should overrule or revamp its "blocking charge" policy.

As the attached sworn declarations show, Exs. C–D; Ex. E, at Ex. N, Apple Bus has not treated union and non-union members differently in discipline proceedings nor has it interfered with employees' free choice despite Teamsters's multiple claims to the contrary. Rather, Teamsters's newest charge is baseless and filed to delay and postpone the decertification election rather than to advocate on behalf of wronged employees. Indeed, Teamsters has alleged misconduct on the part of the very employees it is bound to represent and publicly claimed that those employees were not appropriately reprimanded or punished for that alleged misconduct. Not only are the bald assertions of misconduct incorrect, such allegations make the Region's recent application of the "blocking charge" policy even worse.

Even if Apple Bus committed the alleged violations, those violations did not affect the decertification petition filed fifteen months before the latest blocking charge was even filed, nor could they cause employees to further disaffect from Teamsters. *See, e.g., Tenneco Auto., Inc. v. NLRB*, 716 F.3d 640, 649–50 (D.C. Cir. 2013) (noting not all employer ULPs taint employees' decertification petition). The employees' statutory right to petition for a decertification election should not be disregarded because Teamsters baldly asserts that Apple Bus acted unlawfully.

A.–C. [Incorporated from Fourth Request for Review. *See* Ex. E, at 11–16.]

D. Chase's case continues to show the "blocking charge" policy's impingement on employees' rights.

Despite majority support for decertification since March 2018, the Region continues to postpone Petitioner's decertification election based on the notion that some connection *might* exist between that petition and the allegedly unlawful "new" employer conduct. Conduct that is not even

new but, according to Teamsters, began all the way back in March 2018. By continuing to postpone the election based solely on Teamsters' ULP filings, the Regional Director's seventh swift denial of Petitioner's and employees' Section 9(c)(1)(A)(ii) right to a decertification election continues to highlight the "blocking charge" policy's farcicality.

1. The causal nexus test.

To block an election, *Master Slack Corporation* demands a ULP be "of a character as to either affect Teamsters's status, cause employee disaffection, or improperly affect the bargaining relationship itself." 271 NLRB 78, 84 (1984). Stated more succinctly, "the unfair labor practices must have caused the employee disaffection here or at least had a 'meaningful impact' in bringing about that disaffection." *Id.* To determine whether a causal connection exists, one must analyze several factors including: "[1] the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; [2] any possible tendency to cause employee disaffection from the union; and [3] the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union." *Id.* (citing *Olson Bodies, Inc.*, 206 NLRB 779 (1973)).

2. No disparate treatment.

While the newest ULP charge again tries to claim coercive conduct by Apple Bus based on a 2018 discharge and 2019 disparate treatment, doing so is improper here where the ULP's false allegations remove any possible taint on the petition. *See Tenneco Auto, Inc. v. NLRB*, 716 F.3d 640, 650 (D.C. Cir. 2013) (noting violations that cause dissatisfaction with a union, among others, is that "those involving coercive conduct such as discharge"). Teamsters would have it believed that Apple Bus gave favorable treatment to Chase, Reichert, and Fisher in response to accidents only because they are non-union members based on its recitation of the facts. And that Apple Bus

gave Knight, Johnson, and Concepcion harsher treatment for similar accidents based solely on their union membership status. Yet Teamsters recitation of the facts is wrong.

First, Apple Bus discharged Knight for leaving children alone on her unsecured school bus while it was running, which is against training and company policies and is a dischargeable infraction that neither Chase, Reichert, nor Fisher have ever committed nor been warned or accused of committing. *See* Ex. E, at Ex. N, Chase Decl., ¶ 11; Ex C, Reichert Decl., ¶ 10; Ex D, Fisher Decl., ¶ 7. In addition, there is no evidence that Apple Bus knew Knight was an avid union supporter and that this formed the basis of her March 28, 2018 discharge. Nor could Chase and her fellow employees have known about Knight's March 28, 2018 firing when they filed their second decertification case thirteen days prior on March 15, 2018. Furthermore, Teamsters did not file its initial ULP about Knight until June 12, 2018, almost three months after Apple Bus had fired Knight for leaving children unattended. Ex. E, at Ex. M.

Teamsters attempts to dredge up an old claim by misstating the facts of Reichert's situations is particularly inappropriate. Contrary to Teamsters's claim, Reichert's accident was not similar to Knight's because Reichert properly secured her bus and removed the keys before she briefly left it. Ex C, Reichert Decl., ¶ 5. After Apple Bus investigated the incident, it informed Reichert that no discipline was required because the video recording showed that she properly handled the situation. Ex C, Reichert Decl., ¶ 6. Since no violation occurred, Reichert and Knight's situations are not similar, and no disparate treatment took place.

Second, Johnson received exactly the same response to her accident that Reichert and Fisher did—retraining and a write-up. Yet Teamsters argues that Johnson's same treatment for a similar accident was improper based on an accident that Reichert never committed and its claim that Fisher never had to do retraining. Not only is there no disparate treatment since Reichert and

Fisher both had to do retraining for similar violations, Ex C, Reichert Decl., ¶¶ 7–8; Ex D, Fisher Decl., ¶¶ 5–6, Reichert did not even commit the offense of side swiping another bus that Teamsters is falsely claiming she did. Ex C, Reichert Decl., ¶¶ 7–9. Rather, she failed to engage her parking break and rolled into the parked bus in front of her when no children were on or near either bus. Ex C, Reichert Decl., ¶ 7.

When analyzing the true facts, one is at a loss on how Teamsters can claim disparate treatment in light of Apple Bus's consistent treatment of employees for similar violations—retraining and a write-up in the employee's file or discharge for the gross offense of leaving young children unsecured on a bus. Since Apple Bus did not disparately treat employees based on their respective non-union membership status, there are no facts that could cause disaffection, nor could such incidents have influenced the decertification election filed in March 2018.

3. No serious unilateral changes.

Not only is the claimed discharge and disaffection here insufficient to show a causal nexus, the remaining allegation in the ULP charge does not allege a serious unilateral change by Apple Bus that improperly affects the bargaining relationship or that is an essential employment term and condition. The violation types that cause dissatisfaction with the union usually involves the employer "withholding benefits, and threats to shutdown the company operation." *Tenneco Auto*, 716 F.3d at 650 (finding employer's refusal to provide union addresses of replacement employees, requirement that employees obtain company permission before posting materials, and discipline of union advocate did not taint petition); *see also Goya Foods*, 347 NLRB 1118, 1122 (2006) (finding hallmark violations are those "issues that lead employees to seek union representation").

Teamsters claims Apple Bus issued Concepcion a written warning for attendance issues when the company has no attendance policy at all. Ex. B, at 2. Teamsters then claims that Apple

Bus added insult to injury by doing so against Concepcion after it had suspended him in 2018 for simply hitting a guard rail. Ex. B, at 2. While it stretches credulity to believe that a place of business would have no attendance requirement for an employee to retain his or her job, such a requirement that results in a written write up if violated is not an essential term and condition of employment leading to a taint of the decertification election.

Further, Teamsters's implication that Concepcion's accident of hitting a guard rail with his bus while driving it is like Reichert rolling into the bus in front of her or Fisher hitting the bus behind him, both when no students were on or near the buses, simply is incongruous. Ex C, Reichert Decl., ¶¶ 7–8; Ex D, Fisher Decl., ¶¶ 5–6. Indeed, Teamsters suspiciously omits whether children were present on the bus when Concepcion hit the guard rail, or any other factors establishing similarities between several diverse incidents. Nor is there any evidence that Apple Bus knew Concepcion was a union supporter when he had his accident in 2018 or when it wrote him up in 2019 for his attendance failures, or that his union status is the sole basis for why Apple Bus issued a written warning or suspended him.

4. No encouragement to seek union representation.

None of the claimed Apple Bus conduct is of the type that encourages employees "to seek union representation." *Goya Foods*, 347 NLRB at 1122. Just because one is a non-union member does not mean Apple Bus is giving favorable treatment. Yet that is what Teamsters would have assumed based on its recitation of the facts, a recitation that is inaccurate as set forth above, *supra* Sections I.D.2–3. The claims and sequence of events here remove even the specter of taint from this decertification petition and suggests the ULP charge was, yet again, Teamsters's strategic attempt to block the election. *See Pinnacle Foods Grp., LLC*, 2019 WL 656304, at *1 (Chairmen Ring and Member Kaplan noting the suspect timing of a ULP "filed 18 months after the Union's

certification and 12 months after the parties began bargaining, but only days after the decertification petition was filed" suggests a primary purpose of delaying the decertification election and supports the Board's revisit of "the blocking charge policy in a future rulemaking proceeding").

5. Ultimately fails the Master Slack *test.*

Even if Teamsters' newest charge had merit, which it does not, it cannot block the election and nullify employees' Sections 7 and 9 rights because there is no "possibility of their detrimental or lasting effect on employees," no "possible tendency to cause employee disaffection from the union," and no negative affect on "employee morale" *Master Slack*, 271 NLRB at 84; *see also Tenneco*, 716 F.3d at 650. As has been noted multiple times, Petitioner and the other bargaining unit members already had determined they were dissatisfied with Teamsters and had filed their second decertification fifteen months before this new ULP charge was filed. All of this occurred long before Teamsters's new charge, and almost six months after the alleged violations occurred before Teamsters even filed the applicable charge. Ex. A.

In turn, even assuming Chase, Reichert, and Fisher committed the alleged misconduct without the "appropriate" discipline and even assuming the violations claimed here would have a "detrimental or lasting effect on employees," cause "employee disaffection from the union," and negatively affect "employee morale," *id*., Apple Bus would have had to terminate Knight, written up Johnson, and suspended and disciplined Concepcion all while letting Chase, Reichert, and Fisher "off the hook" *before* the bargaining unit majority decided they wanted the union out. Yet Petitioner and the bargaining unit members already had determined they were dissatisfied with Teamsters and had filed the second decertification on March 15, 2018—almost a full year before the alleged disparate treatment occurred here and fifteen months before this newest charge was

filed. The sequence of claimed events here removes any possible taint from the decertification petition and suggests the ULP simply was another strategic attempt to block the election rather than to vindicate legal rights.

There is no causal connection, as required by *Master Slack,* between this ULP charge and Petitioner's decertification petition. Here, employees have been disenchanted with Teamsters for several years. Any way Teamsters's charge is evaluated, it lacks merit. Even if it did not, it cannot block the election and nullify employees' Sections 7 and 9 rights.

II. Alternatively, the Board should require the Region to process the petition or establish a "causal nexus" between the alleged Employer infractions and the employees' decertification desire to justify the "blocking charge" policy's continued application.

A. [Incorporated from Fourth Request for Review. *See* Ex. E, at 19.]

B. The Region should establish, either itself or by requiring Teamsters to do so at a *Saint-Gobain* hearing, that a "causal nexus" exists precluding application of Exception 2 and the election's processing.

The Regional Director should, before blocking the election, have to establish why he 1) opines that there is a causal nexus between the charges and the decertification petition that precludes the election's processing, Casehandling Manual Sec. 11730.4 (noting if a Regional Director establishes no causal relationship between the ULP allegations and a decertification petition, the Regional Director should reconsider whether the charge should continue to block the petition's processing), and 2) believes the employees could not exercise their free choice in an election despite "blocking charges" and thereby excluding application of Exception 2, Casehandling Manual Sec. 11731.2 (noting a decertification election should proceed and the Regional Director should deny a blocking request where individuals could exercise their free choice). A mere statement that the "Union filed a request to block together with an offer of proof detailing its evidence in support of the allegations"—which offer of proof appears to be Teamsters

inaccurate recitation of the facts—and that based on this the Regional Director has "determined the decertification petition will be held in abeyance pending the investigation" is insufficient without more to establish either requirement. Ex. A, at 1.

In the alternative, the Regional Director should require Teamsters to prove a "causal nexus" exists at a *Saint-Gobain* evidentiary hearing. For a ULP to taint a petition or block an election, there must be a "causal nexus" between Apple Bus's actions and the employees' dissatisfaction with Teamsters. *Master Slack*, 271 NLRB 78. But here, there has been no such showing nor did the Regional Director compel Teamsters to make such a showing. Not only did the alleged violations occur almost a year after the decertification had been filed negating any causal connection, Petitioner is left to speculate about Teamsters's claimed causal connection between the employees' motivations for wanting to oust Teamsters and Teamsters's newest allegations.

At the very least, the Board should require the Regional Director to hold a *Saint-Gobain* hearing as a precondition to blocking an election based on Teamsters's ULP charges. *Saint-Gobain Abrasives, Inc.*, 342 NLRB at 434. At such an adversarial hearing Teamsters will have to meet its burden of proof that a "causal nexus" exists. *See, e.g.*, *Roosevelt Mem'l Park, Inc.*, 187 NLRB 517, 517–18 (1970) (holding a party asserting a bar's existence bears the burden of proof). As the Board noted in *Saint-Gobain*, "it is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights." *Saint-Gobain Abrasives, Inc.*, 342 NLRB at 434. But with no *Saint-Gobain* hearing or an explanation from the Region, all this record contains is conjecture by Teamsters, the very party desiring to delay its own decertification.

The Regional Director has erred, again and again, by reflexively blocking this election and by failing to find, or by failing to require Teamsters to prove in an adversarial hearing, the "causal

nexus" between the allegations in Teamsters's ULP charges and the employees' continued disaffection. Petitioner and her fellow employees' Section 7 and 9 rights have been rendered meaningless by this process for almost two years.

CONCLUSION

The Board should grant Petitioner's Request for Review, reverse the Regional Director's decision, and order the Regional Director to process this decertification petition and count the ballots. In addition, the Board should overrule or substantially overhaul its "blocking charge" policy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2019, a true and correct copy of the foregoing Request for Review was filed with the Executive Secretary using the NLRB e-filing system, and copies were sent to the following parties via e-mail, as noted:

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United States Government

OFFICE OF THE EXECUTIVE SECRETARY
NATIONAL LABOR RELATIONS BOARD
1015 HALF STREET SE
WASHINGTON, DC 20570

September 18, 2019

Re: Apple Bus Company
Case 19-RD-216636

EXTENSION OF TIME TO FILE OPPOSITION TO REQUEST FOR REVIEW

The request for an extension of time in the above-referenced case is granted. The due date for the receipt in Washington, D.C. to file Opposition to Request for Review of the Regional Director's Decision to Block the Petition is extended to **October 17, 2019**. This extension of time to file opposition to the request for review applies to all parties.

/s/ Farah Z. Qureshi
Associate Executive Secretary

cc: Parties
Region

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPLE BUS COMPANY
Employer,
and

Case No. 19-RD-216636

GENERAL TEAMSTERS LOCAL 959
Union,
and

ELIZABETH CHASE
Petitioner.

UNION'S OPPOSITION TO PETITIONER'S FIFTH REQUEST FOR REVIEW

I. INTRODUCTION

On July 31, 2017, Elizabeth Chase (Chase), filed a decertification petition (Case No. 19-RD-203378).

On August 28, 2017, Chase's decertification petition was dismissed by the Regional Director on the basis of *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), and the successor bar doctrine (Exhibit B to Fourth Request for Review).

On September 25, 2017, Chase filed a Request for Review of the Regional Director's Decision and Order. The same day, Apple Bus filed a Request for Review of the Regional Director's Decision and Order.

On December 14, 2017, the National Labor Relations Board (Board) issued an Order denying the two Requests for Review because they raised no substantial issues warranting review.

On March 15, 2018, Chase filed another decertification petition (Case No. 19-RD-216636).

On March 16, 2018, Chase filed an unfair labor practice charge against Apple Bus for allegedly continuing to bargain with a minority union. The Regional Director dismissed that

charge on August 15, 2018 and the Office of Appeals later denied Chase's appeal (see Fourth Request for Review at 3, fn. 5).

On March 20, 2018, the Regional Director issued an Order Postponing Hearing Indefinitely due to five blocking unfair labor practice charges filed by the Union (Exhibit H to Fourth Request for Review).

On March 28, 2018, Chase filed Petitioner's Request for Review of the Regional Director's March 20, 2018 Order Postponing Hearing Indefinitely.

On or about April 9, 2018, Apple Bus filed Employer's Response to the Petitioner's Request for Review and Union's Brief in Opposition.

On May 2, 2018, the Regional Director notified Chase that the petition would be held in abeyance pending the investigation of unfair labor practice charges in Cases 19-CA-218290 and 19-CA-218755 (Exhibit K to Fourth Request for Review).

On May 9, 2018, this Board issued an Order denying Petitioner's Request for Review of the Regional Director's determination to hold the petition in abeyance as it raised no substantial issues warranting review (Exhibit L to Fourth Request for Review).

On May 15, 2018, Chase filed Petitioner's Second Request for Review. The Union filed its Opposition.

On July 9, 2018, the Regional Director notified Chase that the petition would be held in abeyance pending the investigation of the unfair labor practice charge in Case 19-CA-222039 (Exhibit O to Fourth Request for Review).

On July 23, 2018, Chase filed Petitioner's Third Request for Review of the Regional Director's July 9, 2018 election block.

On August 2, 2018, this Board issued an Order denying Petitioner's Second and Third Requests for Review of the Regional Director's determination to hold the petition in abeyance as they raised no substantial issues warranting review (Exhibit Q to Fourth Request for Review).

On August 1, 2019, Chase filed Petitioner's Fourth Request for Review of the Regional Director's July 9, 2019 election block.

On August 20, 2019, the Regional Director notified Chase (Exhibit A to Fifth Request for Review) that the petition would be held in abeyance pending investigation of the unfair labor practice charge in Case 19-CA-246017 (Exhibit B to Fifth Request for Review).

On September 13, 2019, Chase filed Petitioner's Fifth Request for Review of the Regional Director's August 20, 2019 election block. Chase cited Board Rules and Regulations 102.67 and 102.71 and urged this Board to re-evaluate the blocking charges rules (Fifth Request for Review at 1).

The Union files this Opposition to Petitioner's Fifth Request for Review. The Union incorporates by reference its previous Oppositions to Chase's Requests for Review. There are no compelling reasons to grant Chase's Fifth Request for Review. Chase's decertification petition was not dismissed or denied by the Regional Director. It was merely postponed or held in abeyance pending investigation and decisions on the Union's unfair labor practice charges (Exhibit A, first paragraph, to Fifth Request for Review).

II. FACTS

From 2008-2017, the Union represented First Student, Inc. employees performing services for the Kenai Peninsula Borough School District (see Exhibit B to Fourth Request for Review, Decision and Order of the Regional Director (DO) at 1).

After being awarded a bid, Apple Bus performed the services starting July 1, 2017. The Union and Apple Bus met on February 24, 2017 to discuss a probable collective bargaining

relationship. For several months, the Union asked Apple Bus to agree to be bound by the First Student collective bargaining agreement (CBA) but Apple Bus refused. The Union rejected an agreement presented by Apple Bus. DO at 2.

On June 8, 2017, Apple Bus mailed job offer letters to 105 of the 126 former First Student employees. DO at 2. By August 11, 2017, 98 former First Student employees and 4 persons who had not worked for First Student accepted positions with Apple Bus. Apple Bus expected to employ 115 Bargaining Unit employees by August 14, 2017. DO at 3.

On July 18 and 19, 2017, the Union and Apple Bus first met to bargain for a new CBA. Tentative agreement was reached on Declaration of Purpose, Recognition, Maintenance of Standards, and Union Stewards articles. DO at 2-3. The Union and Apple Bus met again on August 9, 10, and 11, 2017. DO at 3. Further negotiations were held after that. The Union asked to schedule more days for negotiatious but Apple Bus usually only agreed to meet two days a month, refused to schedule dates past the next month, and canceled some negotiation sessions.

Apple Bus sent out job offer letters in June 2017, hired a majority of Bargaining Unit employees in July 2017 at the earliest, and did not have a majority of Bargaining Unit employees hired and on the job until August 14, 2017. DO at 2-3.

The Regional Director noted, "A 'reasonable period of bargaining' for the purposes of the successor bar doctrine ... is 'measured from the date of the first bargaining session after recognition.'" DO at 3 (citations omitted). Based on the foregoing facts, and notwithstanding the Regional Director's DO and Chase's argument that the successor bar expired on February 24, 2018 (Fourth Request for Review at 2, fn. 4), the Union urges that the successor bar should be measured from no earlier than the date of the first substantive bargaining meeting of the Union and Apple Bus on July 18, 2017 and should have lasted until at least July 18, 2018. However, since Apple

Bus did not have a majority of Bargaining Unit employees hired and on the job until August 14, 2017 (DO at 2-3), the Union further urges that the successor bar should have been seen as in effect until at least August 14, 2018.

Apple Bus never questioned the Union's majority status and agreed to a Recognition article. DO at 3. Chase argued that most employees were unaware of the status of negotiations or employer misconduct (Fourth Request for Review at 3, 13, 18). However, four Apple Bus employees have been on the Union negotiating team and directly involved when the Union and Apple Bus negotiated. The Union kept employees informed through meetings, events, gatherings, publications, and social media.

In July 2019, the Union and Apple Bus reached tentative agreement to a first CBA. Apple Bus signed the tentative CBA. An employee ratification vote was held September 25-27, 2019. The result was a tie vote. The parties are considering their next steps.

III. ARGUMENT IN OPPOSITION TO REVIEW

In requesting review for the fifth time, Chase again cited this Board's Rules and Regulations Sections 102.67 and 102.71 (Fifth Request for Review at 1). Those sections provide for granting a request for review only where compelling reasons exist therefor, i.e., that there are compelling reasons for reconsideration of an important Board rule or policy.

Webster's II New Riverside University Dictionary defines "compel" or "compelling" as, "1. To force, drive, or constrain, 2. To make necessary." Chase may wish to see the law and blocking charge policy changed but there are no compelling reasons to change the policy.

A. The successor bar provided stability for the bargaining relationship

Chase's initial decertification petition was dismissed by the Regional Director on the basis of *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011) and the successor bar doctrine (Exhibit B to Fourth Request for Review). *UGL* restored the "successor bar" doctrine. Under the doctrine,

when a successor employer acts in accordance with its legal obligation to recognize an incumbent representative of its employees, that representative is entitled to represent the employees in collective bargaining with their new employer for a reasonable period of time, without challenge to its representative status. *UGL* at 801, citing *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999).

Analogous bar doctrines are well established in labor law, based on the principle that "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed." The bar promotes a primary goal of the National Labor Relations Act (NLRA) by stabilizing labor-management relationships and promoting collective bargaining, without interfering with the freedom of employees to periodically select a new representative or reject representation. *UGL* at 801.

The *UGL* Board observed that the transition from one employer to another threatens to seriously destabilize collective bargaining, even when the new employer must recognize the incumbent union. The new employer is free to choose (on any non-discriminatory basis) which of the predecessor's employees it will keep and which will go. It is free to reject an existing CBA. It will often be free to establish unilaterally all initial terms and conditions of employment. In a setting where everything employees have achieved through collective bargaining may be swept aside, the union must deal with a new employer and, at the same time, persuade employees that it can still effectively represent them. *UGL* at 805.

On the effect of a successor situation on employees, *UGL* noted, "After being hired by a new company ..., employees initially will be concerned primarily with maintaining their new jobs. *In fact, they might be inclined to shun support for their former union, especially if they believe that such support will jeopardize their jobs with the successor*.... Without the presumptions of majority support ..., an employer could use a successor enterprise as a way of getting rid of a labor contract

and of exploiting the employees' hesitant attitude towards the union to eliminate its continuing presence." *UGL* at 803 (citation omitted).

B. The successor bar protected employee free choice

The *UGL* Board noted that the *St. Elizabeth Manor* Board rejected the view that the "successor bar" gave too little weight to employee freedom of choice, which it recognized as a "bedrock principle of the statute." The crucial aspect of the balance struck by the successor bar was that the bar "extends for a 'reasonable period,' not in perpetuity." *UGL* at 804, 808. *UGL* defined the reasonable period of bargaining mandated by the successor bar. Where the successor employer recognizes the union, but unilaterally announces and establishes initial terms and conditions of employment before proceeding to bargain, the "reasonable period of bargaining" will be a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the union and the employer. The Board will apply the *Lee Lumber* analysis to determine whether the period has elapsed. Where the parties are bargaining for an initial contract, because the destabilizing factors associated with successorship are at their height, a longer insulated period is appropriate. *UGL* at 808-809.

C. The blocking charge policy is consistent with the purpose of the NLRA, aims to protect employee rights, and should not be changed; the current case shows no reason to change the blocking charge policy; no adversarial hearing is needed

Chase alleges that the Regional Director did not hold a hearing, there was no proof of a "causal nexus," and the blocking charge rules halt decertification elections simply based on a union filing an unfair labor practice charge (Fourth Request for Review at 3-4, 5-6, 9, 20-21; Fifth Request for Review at 4, 5-6, 7, 9, 11, 12-14). Chase claims that the unfair labor practice charges are without veracity or merit (Fourth Request for Review at 4, 12, 13, 16, 18, 19; Fifth Request for Review at 2, 4, 5, 6, 7, 8, 9, 10, 11, 12). Chase cynically and inaccurately portrays the Regional Director's Decision and Order and decision to hold the petition in abeyance (Exhibit A to Fifth

Request for Review) as a swift denial (Fifth Request for Review at 7), as at the Union's behest (Fourth Request for Review at 2, 3, 10), invariable (Fourth Request for Review at 13), with immediate application (Fourth Request for Review at 13), predictable (Fourth Request for Review at 9), arbitrary (Fourth Request for Review at 10), automatic (Fourth Request for Review at 13, 16, 19; Fifth Request for Review at 1, 5), and reflexive (Fourth Request for Review at 21; Fifth Request for Review at 13) in response to the Union filing blocking charges.

Chase fails to acknowledge the requirements and guidance of the Board's Casehandling Manual Part Two Representation Proceedings:

> **11730 Blocking Charge Policy – Generally**
>
> The filing of a charge does not automatically cause a petition to be held in abeyance. When a party to a representation proceeding files an unfair labor practice charge and desires to block the processing of the petition, the party must file a request that the petition be blocked and must simultaneously file a written offer of proof in support of the charge that contains the names of the witnesses and a summary of each witness's anticipated testimony ... The charging party requesting to block the processing of the petition must promptly make its witnesses available. If the regional director determines that the party's offer of proof does not describe evidence that, if proven, would interfere with employees free choice in an election or would be inherently inconsistent with the petition itself, ... the regional director shall continue to process the petition and conduct the election where appropriate ... [T]he blocking charge policy is premised solely on the Agency's intention to protect the free choice of employees in the election process.

The Regional Director's letter (Exhibit A to Fifth Request for Review at 1) stated, "This is to notify you that the petition [in Case 19-RD-216636] will continue to be held in abeyance pending the investigation and disposition of the recently filed unfair labor practice charge in Case 19-CA-246017. Case 19-CA-246017 ... alleges that the Employer has violated [Sections] 8(a)(3) and (5) of the Act by discriminatorily disciplining, suspending, and terminating certain employees who support the Union. On August 9, 2019, the Union filed a request to block together with an offer of proof detailing its evidence in support of the allegations. Based on this, I have determined the decertification petition will be held in abeyance pending the investigation. Such action is

consistent with Representation Casehandling Manual Section 11730.2 Type I Charges: Charges that Allege Conduct that Only Interferes With Employee Free Choice, which provides:

> When the charging party in a pending unfair labor practice case is also a party to a petition, and the charge alleges conduct that, if proven, would interfere with employee free choice in an election, were one to be conducted, and no exception (Sec. 11731) is applicable, the charge should be investigated and either dismissed or remedied before the petition is processed if the charging party files a request to block accompanied by a sufficient offer of proof and promptly makes its witnesses available.

The Regional Director's letter (Exhibit A to Fifth Request for Review at 1 -2) further explained to Chase:

> As you are aware, the RD petition was already blocked. It will remain so, as required by Representation Casehandling Manual [Section] 11734, Resumption of Processing of Petition, until the Employer has taken all remedial action required by the two settlement agreements in: (1) Cases 19-CA-230002, 19-CA-229797, 19-CA-228939, 19-CA-229782, 19-CA-227811, 19-CA-227810, 19-CA-222050, 19-CA-221066, 19-CA-218290, and 19-CA-212813; and (2) Cases 19-CA-242905, 19-CA-242952, and 19-CA-242954.[1]
>
> As to the first group of cases, 19-CA-230002 *et. al*, the Board has denied requests for review of the Region's decision to block the petition. The Region, per Compliance Casehandling Manual [Section] 10528.4, Bargaining Obligations Monitored for a Reasonable Period of Time, is continuing to monitor compliance for a reasonable period of time after the expiration of the notice posting period.
>
> As to the second group of cases, the Petitioner has filed a request for review and the matter is pending before the Board.[2] In the interim, the Region approved a bilateral settlement agreement on August 16, 2019, encompassing the allegations of these charges filed on June 6 and 7, 2019. The allegations include that the Employer violated [Sections] 8(a)(1) and (5) of the Act by, *inter alia*, failing to provide the Union with information, unilaterally changing its visitation policy, engaging in regressive bargaining, and creating the impression of surveillance. Since these allegations involve conduct that could interfere with employee free choice in an election, were one to be conducted, the Region blocked the petition.

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[1] A third case, 19-CA-238757, involving access and described in detail in the letter to you from Regional Director Hooks dated July 9, 2019, recently closed in compliance. The parties' informal settlement agreement in that matter had been approved on about May 14, 2019, and the case closed in compliance on August 8, 2019. As such, it no longer blocks the processing of the petition.

[2] On June 6, 2019, the Union also filed a charge in Case 19-CA-242879, alleging the Employer dealt directly with employees regarding bargaining proposals. Although the Region granted the union's request to block, that charge no longer serves to block the petition, as it has since been withdrawn.

As stated in the last sentence of Section 11730, the blocking charge policy is intended to protect the free choice of employees in the election process. The policy began in 1937 "as part of the Board's function of determining whether an election will effectuate the policies of the Act." *American Metal Products*, 139 NLRB 601 (1962); *U.S. Coal & Coke*, 3 NLRB 398 (1937). The Board's principal role in elections is to ensure that employees are able to express their choice free of unlawful coercion. The policy aims to ensure that interference with employee choice is remedied before an election. The policy gives a regional director discretion to not process a petition in the face of a pending unfair labor practice charge if the regional director believes that employee free choice is likely to be impaired. Here, it should be assumed that the Regional Director properly followed the above requirements and guidance and sought to protect employee free choice in the election process. The Regional Director's August 20, 2019 notification (Exhibit A to Fifth Request for Review) stated, "... [The] allegations of these charges filed on June 6 and 7, 2019 ... involve conduct that could interfere with employee free choice in an election, were one to be conducted...."

Chase mistakenly, and hysterically, portrays the Union's unfair labor practice charges and blocking charges as calculated filings or withdrawals, strategically filed, intended to strategically delay, and Machiavellian maneuvering (Fourth Request for Review at 3, 9, 10, 12, 19; Fifth Request for Review at 4, 10, 12). In fact, the unfair labor practice charges and offers of proof filed by the Union have raised serious concerns about unlawful Apple Bus coercion and interference with employee choice including failure to bargain in good faith by:

1. Failing to provide information the Union requested during contract negotiations - information necessary for the Union to bargain for a new CBA. Charge 19-CA-212764.

2. Unilaterally changing terms and working conditions for employees during CBA negotiations. Charge 19-CA-212776.

3. Unilaterally changing employees' wages during CBA negotiations. Charge 19-CA-212798.

4. Failing to agree to schedule negotiations and meet with the Union at reasonable dates/times for the purpose of bargaining a CBA. Charge 19-CA-212813.

5. Failing to provide prior notice to the Union re changes it was going to make during the course of CBA negotiations for holiday pay, standby pay, park out benefits/pay, and longevity; during the course of bargaining the Company unilaterally provided gifts to certain employees in the form of holiday pay, standby pay, and park out pay/benefits without prior knowledge of the Union; unilaterally ceasing holiday pay after it had established a practice of paid holidays. Charge 19-CA-214770.

6. Surface bargaining; lack of commitment to the bargaining process as evidenced by failure to meet with the Union at reasonable times, including the frequency of meetings, actual bargaining time, the number of tentative agreements reached, lengthy caucuses taken by the Company for relatively non-complex issues, refusal to negotiate a Union security clause, and refusal to negotiate over certain sections of the proposed CBA, among other things. Charge 19-CA-218290. An NLRB settlement covered this charge and cases 19-CA-230002, 19-CA-229797, 19-CA-228939, 19-CA-229782, 19-CA-227811, 19-CA-227810, 19-CA-222050, 19-CA-221066, and 19-CA-212813 (Exhibit S to Fifth Request for Review).

7. Allowing and/or assisting certain employees to pursue decertifying the Union; allowing certain employees to utilize Company resources, including decertification activity on Company time, among other things. Charge 19-CA-218755.

8. Failing to bargain in good faith, regressive bargaining. Charge 19-CA-221066. Part of NLRB settlement agreement referenced in 6 above.

9. Discriminating against employees based on whether they support or do not support the Union and discouraging employees from supporting the Union; termination of Toni Knight. Charge 19-CA-222039.

10. Failing to bargain in good faith, failing to agree to meetings, limiting bargaining sessions. Charge 19-CA-222050. Part of NLRB settlement agreement referenced in 6 above.

11. Failing to bargain in good faith, failing to provide policies and information necessary to bargain for a new CBA. Charge 19-CA-223071.

12. Failing to bargain in good faith, refusing to bargain economic items. Charge 19-CA-227810. Part of NLRB settlement agreement referenced in 6 above.

13. Failing to bargain in good faith by canceling meetings, frequency of meetings, actual bargaining time, etc. Charge 19-CA-227811. Part of NLRB settlement agreement referenced in 6 above.

14. Failing to bargain in good faith, failing to provide information necessary for contract negotiations. Charge 19-CA-228939. Part of NLRB settlement agreement referenced in 6 above.

15. Failing to bargain in good faith re economics, canceling meetings, refusal to schedule meetings, surface bargaining, etc. Charge 19-CA-229782. Part of NLRB settlement agreement referenced in 6 above.

16. Failing to bargain in good faith, failing to provide information necessary for contract negotiations. Charge 19-CA-229797. Part of NLRB settlement agreement referenced in 6 above.

17. Failing to bargain in good faith, failing to provide information necessary to bargain for a new CBA. Charge 19-CA-230002. Part of NLRB settlement agreement referenced in 6 above.

18. Refusing or interfering with Union representatives' access. Charge 19-CA-238757. Resulted in settlement that required Apple Bus to post a notice.

19. Soliciting direct dealing, telling employees to contact management with questions about bargaining proposals. Charge 19-CA-242879. The Union withdrew this charge.

20. Failing to bargain in good faith, failing to provide revenue contract necessary to bargain for a new CBA. Charge 19-CA-242905. The Union amended this charge. The NLRB found merit to the charge. An NLRB settlement covered this charge and cases 19-CA-242952, and 19-CA-242954 (see Exhibit A to Fifth Request for Review at 2).

21. Interfering, chilling, and surveilling Union representative. Charge 19-CA-242952. The Union amended this charge. The NLRB found merit to the charge. Part of NLRB settlement agreement referenced in 20 above.

22. Failing to bargain in good faith, surface bargaining, and delay tactics. Charge 19-CA-242954. The Union amended this charge. The NLRB found merit to the charge. Part of NLRB settlement agreement referenced in 20 above.

23. Continued discrimination in disciplinary actions against employees who support the Union; favored treatment to employees who support the decertification petition. Charge 19-CA-246017.

The NLRB found merit to a number of the above charges. Some charges blocked an election. The NLRB proposed settlement to Apple Bus with respect to a number of the charges and Apple Bus decided to settle. A 60-day posting was required in connection with the settlement agreements. During that time the election blocks continued.

With respect to Charge 19-CA-222039 (listed in 9 above), Chase fails to mention (Fourth Request for Review at 5; Fifth Request for Review at 3-4, 7-8) that, as stated in the Charge, Union supporter Toni Knight was terminated for allegedly violating a policy that neither she nor the Union had ever been given, despite requests for the policy.

Chase implies, but fails to prove, that there was anything improper about the withdrawal by the Union of a number of unfair labor practice charges. Withdrawal can occur because a charge was refiled, requested information was finally provided, a settlement agreement resolved the dispute, or other good reason. If not for settlement agreements reached, a Complaint may have been issued with respect to a number of the Union charges.

Chase alleges that the Regional Director is violating her Sections 7 and 9 rights by "gratuitously monitoring" settlements and compliance (Fourth Request for Review at 9; Fifth Request for Review at 4). To the contrary, the Regional Director detailed in his letter (Exhibit A to Fourth Request for Review; Exhibit A to Fifth Request for Review at 2) the valid reasons and authority for continued monitoring and the blocking charges.

Chase argues (Fourth Request for Review at 12) for an election on the authority of *Johnson Controls, Inc.*, 368 NLRB 20 (July 3, 2019). That case involved anticipatory withdrawal of recognition and is distinguishable from Apple Bus and its campaign of unfair labor practices. Here the unfair labor practice charges have not all been investigated or resolved. Therefore, Chase's

attempt (Fourth Request for Review at 16; Fifth Request for Review at 4, fn. 2, 5) to rely on *Cablevision Sys. Corp.*, is also misguided and does not advance her crusade.

Chase's reliance (Fourth Request for Review at 11, 20, 21; Fifth Request for Review at 5-6, 12-13) on *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004), is off base. In *Saint Gobain* the Regional Director dismissed a decertification petition without a hearing. The Board held that a hearing was a prerequisite to denying the petition. At 434. By contrast, here the Regional Director did not deny or dismiss Chase's petition. A *Saint Gobain* hearing does not have to be separate from the unfair labor practice hearing. A regional director may use the record in an unfair labor practice hearing in making a *Saint Gobain* determination. See, e.g., *NTN-Bower Corp.*, 10 RD 1504 (Order, May 20, 2011). *Saint Gobain* did not address situations like here where Apple Bus has encouraged decertification and surface bargained.

Chase desperately attempts to rely on dissenting Board and legal views, Orders, and cases before the 2014 rulemaking (Fourth Request for Review at 12-14; Fifth Request for Review at 6-7). But Chase must admit that only 30% of decertification petitions are blocked (Fourth Request for Review at 15). *Valley Hospital Medical Center, Inc. and SEIU Local 1107*, Case 28-RD-192131 (Order July 6, 2017), denying Requests for Review of the Regional Director's decision to hold the decertification petition in abeyance pending the investigations of unfair labor practice charges, noted:

> Contrary to our colleague's criticism of the Board's longstanding blocking charge policy, we find it continues to serve a valuable function. As explained in our 2014 rulemaking, the blocking charge policy is critical to safeguarding employees' exercise of free choice. See Representation-Case Procedures, 79 Fed. Reg. 74308, at 74418-74420, 74428-74429 (Dec. 15, 2014). Indeed, "[i]t advances no policy of the Act for the agency to conduct an election unless employees can vote without unlawful interference." Id. at 74429. Nevertheless, in response to commentary and our colleague's concerns, the Election Rule modified the policy to limit opportunities for unnecessary delay and abuse. Id. at 74419-20, 74490.

> We also observe that in upholding the Election Rule, the U.S. Court of Appeals for the Fifth Circuit recently rejected an argument similar to our colleague's … and found that the Board did not act arbitrarily by implementing various regulatory changes resulting in more expeditious processing of representation petitions without eliminating the blocking charge policy altogether. See *Associated Builders and Contractors of Texas, Inc. v. NLRB*, 826 F.3d 215, 228 (5th Cir. 2016). In doing so, the court cited with approval its prior precedent in *Bishop v. NLRB*, 502 F.2d 1024 (5th Cir. 1974), wherein the court set forth the following explanation for why the blocking charge policy is justified:
>
> > If the employer has in fact committed unfair labor practices and has thereby succeeded in undermining union sentiment, it would surely controvert the spirit of the Act to allow the employer to profit by his own wrongdoing. In the absence of the 'blocking charge' rule, many of the NLRB's sanctions against employers who are guilty of misconduct would lose all meaning….
> >
> > Nor is the situation necessarily different where the decertification petition is submitted by employees instead of the employer or a rival union. Where a majority of the employees in a unit genuinely desire to rid themselves of the certified union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.
>
> Id. At 1029 (quoting *NLRB v. Big Three Industries, Inc.*, 497 F.2d 43, 51-52 (5th Cir. 1974)).
>
> Chairman Miscimarra favors a reconsideration of the Board's blocking charge doctrine for reasons expressed in his and former Member Johnson's dissenting views to the Board's Election Rule, 79 Fed. Reg. 74308 at 74430-74460 (Dec. 15, 2014), but he acknowledges that the Board has declined to materially change its blocking charge doctrine….

The Union long negotiated with Apple Bus to try to reach agreement on a first CBA. The Union had to negotiate virtually everything and the issues were complex. Apple Bus, in an initial effort to "run out the successor bar clock" and undermine union sentiment, engaged in repeated unfair labor practices, which forced the Union to file unfair labor practice charges. Apple Bus long hindered the parties' reaching a CBA in the limited time allotted for the Union to do so. Due to the repeated unfair labor practices of Apple Bus, the Union needed more time to reach agreement to the terms of a first CBA. The blocking charges and Regional Director's actions were appropriate.

Chase alleges that the unfair labor practice charges and blocking charges are without veracity or merit (Fourth Request for Review at 4, 12, 13, 16, 18, 19; Fifth Request for Review at

2, 4, 5, 6, 7, 8, 9, 10, 11, 12). Chase has tried to downplay the many egregious unfair labor practices of Apple Bus. The Union filed each blocking charge in good faith based on the merits and the information known to the Union. The Board has traditionally had considerable discretion to adopt practices to effectuate the policies of the NLRA. *American Metal Products*, 139 NLRB 601 (1962).

Employers are not entitled to an election caused by their unlawful conduct. *Frank Bros. v. NLRB*, 321 US 702 (1944) (election not appropriate remedy where union lost majority after employer's wrongful refusal to bargain); *Brooks v. NLRB*, 348 US 96 (1954) (employer's refusal to bargain may not be rewarded with the decertification it seeks). The blocking charge policy has been approved by Federal Courts. *Associated Builders and Contractors of Texas, Inc.,* 826 F3d 215, 228 (5th Cir. 2016); *Bishop v. NLRB,* 502 F2d 1024 (5th Cir. 1974); *NLRB v. Big Three Industries, Inc.,* 497 F2d 43, 51-52 (5th Cir. 1974).

The Union should not be forced to proceed to an election when there are serious and substantial concerns that repeated unfair labor practices by Apple Bus undermined employee free choice. A tainted election may cause additional damage that cannot be remedied by rerunning an election. The blocking charge policy saves the Board from wasting resources on a "contingent" election and forces remediation of the unfair labor practices before an election. No policy of the NLRA is advanced by conducting an election unless employees can vote without unlawful interference and coercion. The blocking charge policy protects against frivolous charges, as indicated by statistics showing a large decline in dismissal of decertification petitions since the new rule went into effect. "Unfair labor practice charges that warrant blocking an election involve conduct that is inconsistent with a free and fair election … there is no inconsistency between the

final rule's preservation of that basic policy and the other changes made by the final rule." 79 Fed. Reg. 74429 (December 14, 2014).

Chase claims majority support for her decertification efforts (Fourth Request for Review at 3, 14, 16, 19; Fifth Request for Review at 6, 11, 12, 14). The Union has no knowledge that it has allegedly lost the support of a majority of Bargaining Unit employees. The Union does not know the details of Chase's alleged petition, how or when signatures were gathered, how many signatures are not valid, and other factors. Apple Bus recognized the Union as the representative of the employees. It has not been proved that the Union does not represent the majority of Bargaining Unit employees. An actual loss of majority support needs to be proved, not simply doubt about majority status, before an employer can withdraw recognition from a union. *UGL* at 806, fn. 21 (citation omitted). As addressed in *Bishop v. NLRB*, where the decertification petition is submitted by employees, where a majority of the employees in a unit genuinely desire to rid themselves of the union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employee attitudes as to make a fair election impossible.

IV. CONCLUSION

There is no good reason to change the current blocking charge policy. For the above and other reasons, this Board should deny Chase's Fifth Request for Review.

Respectfully submitted this 17 day of October 2019.

John Eberhart, General Counsel
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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2019, a true and correct copy of the Union's Opposition to Petitioner's Fifth Request for Review was filed electronically with the Executive Secretary using the NLRB e-filing system and copies were emailed to:

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John Eberhart
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General Teamsters Local 959

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

APPLE BUS COMPANY
Employer

and

ELIZABETH J. CHASE
Petitioner

Case 19-RD-216636

and

GENERAL TEAMSTERS LOCAL 959
Union

ORDER

The Petitioner's Fourth and Fifth Requests for Review of the Regional Director's determinations to hold the petition in abeyance are denied as they raise no substantial issues warranting review.[1]

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[1] In denying review, we rely solely on the fact that the fourth and fifth abeyance decisions were issued during the pendency of notice posting periods associated with settlement agreements in Case 19-CA-238757 and Cases 19-CA-242905 et al., respectively. We do not pass on whether the petitions were properly held in abeyance on the basis of the charge filed in Case 19-CA-246017 or on the basis of "extended monitoring periods" that the Regional Director decided to impose with respect to the settlement agreement in Cases 19-CA-230002 et al. We note that Cases 19-CA-230002 et al. have in any event now been closed on compliance.

We further note that both abeyance determinations predate the Board's recent decision in *Pinnacle Foods Group, LLC,* 368 NLRB No. 97 (2019), which clarified the circumstances under which a pending petition may be held in abeyance on the basis of a settlement agreement's remedial provisions. Any further action with respect to this petition must be consistent with the principles stated in that case. In that regard, as the Board noted in *Pinnacle Foods,* certain preelection actions may be taken with respect to a petition during the notice posting period associated with a settlement agreement. See Case Handling Manual Part 2 (Representation Proceedings) Sec. 11734. Absent good cause, we would expect that authority to be exercised here.

We are mindful of the fact that the petition in this case was filed on March 15, 2018 and has been held in abeyance since then on the basis of successive settled unfair labor practice charges, none of which have been resolved by a finding or admission that the Employer has violated the Act. While these settlements have evidently failed to prevent the filing of further unfair labor charges, they have served to significantly delay the processing of the petition. The question of whether the continued approval of similar settlements would effectuate the policies of the Act is not before us. Although we are troubled by the extreme delay in processing the

JOHN F. RING CHAIRMAN

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., November 18, 2019.

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petition, the circumstances currently before us fall short of establishing that the Regional Director abused his discretion under current law.

We observe that the Board recently issued a Notice of Proposed Rulemaking that addresses, among other things, possible changes to the Board's blocking charge policy. See Representation-Case Procedures: Elections Bars; Proof of Majority Support in Construction Industry Collective-Bargaining Relationships, 84 Fed. Reg. 39930-01 (proposed Aug. 12, 2019). For institutional reasons, we nevertheless apply extant law here in denying the Petitioner's Requests for Review.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

APPLE BUS COMPANY

Employer

and **Case 19-RD-216636**

ELIZABETH J. CHASE

Petitioner

and

GENERAL TEAMSTERS LOCAL 959, STATE OF ALASKA

Union

ORDER APPROVING WITHDRAWAL OF PETITION AND REVOKING CERTIFICATION

On February 29, 2008, in Case 19-RC-15059 General Teamsters Local 959, State of Alaska (the Union) was certified as the exclusive collective-bargaining representative in the following appropriate bargaining unit:

> All full time and regular part time school bus drivers, special service drivers, monitors and attendants employed by the Employer in the Kenai Alaska Borough servicing locations from Portage to Seward Alaska and Seward to Homer Alaska; excluding all office- clerical employees, mechanics, school crossing guards, dispatchers, guards and supervisors as defined in the Act.

After the filing of the petition in Case 19-RD-216636, the Union filed a disclaimer of interest in the continued representation of the employees in the unit set forth in the petition. No evidence has been presented that the Union is acting inconsistently with its disclaimer.

In view of the Union's disclaimer, the Petitioner has requested permission to withdraw its petition.

IT IS ORDERED that the withdrawal request filed by the Petitioner in Case 19-RD-216636 is approved.

IT IS FURTHER ORDERED that the hearing in this matter is cancelled

IT IS FURTHER ORDERED that the Certification of Representative issued in Case 19-RC-15059 is revoked.

Dated:

RONALD K. HOOKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

APPLE BUS COMPANY

Employer

and **Case 19-RD-216636**

ELIZABETH J. CHASE

Petitioner

and

GENERAL TEAMSTERS LOCAL 959, STATE OF ALASKA

Union

AFFIDAVIT OF SERVICE OF: Order Approving Withdrawal of Petition and Revoking Certification, dated .

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **,** I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

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Date

Enter NAME, Designated Agent of NLRB
Name

Signature

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

APPLE BUS COMPANY

Employer

and **Case 19-RD-216636**

ELIZABETH J. CHASE

Petitioner

and

GENERAL TEAMSTERS LOCAL 959, STATE OF ALASKA

Union

ORDER APPROVING WITHDRAWAL OF PETITION, CANCELLING HEARING, AND REVOKING CERTIFICATION

On February 29, 2008, in Case 19-RC-15059, General Teamsters Local 959, State of Alaska (the Union) was certified as the exclusive collective-bargaining representative in the following appropriate bargaining unit:[1]

> All full time and regular part time school bus drivers, special service drivers, monitors and attendants employed by the Employer [First Student, Inc.] in the Kenai Alaska Borough servicing locations from Portage to Seward, Alaska and Seward to Homer, Alaska; excluding all office clerical employees, mechanics, school crossing guards, dispatchers, guards and supervisors as defined in the Act.[2]

After the filing of the petition in Case 19-RD-216636, the Union filed a disclaimer of interest in the continued representation of the employees in the unit set forth in the petition and effectively covering the certified unit. No evidence has been presented that the Union is acting inconsistently with its disclaimer.

In view of the Union's disclaimer, the Petitioner has requested permission to withdraw its petition.

IT IS ORDERED that the withdrawal request filed by the Petitioner in Case 19-RD-216636 is approved **AND** that the hearing in this matter is cancelled.

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[1] The certification identified the Union at the time as General Teamsters Local 959 affiliated with the International Brotherhood of Teamsters.

[2] Apple Bus Company subsequently succeeded First Student, Inc. as the employer of the certified unit and had recognized the Union as the exclusive bargaining representative of the certified unit.

IT IS FURTHER ORDERED that the Certification of Representative issued in Case 19-RC-15059 is revoked.

Dated: November 27, 2019

RONALD K. HOOKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 19
915 2nd Ave Ste 2948
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